

(16,966.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 381.

THE STEAMER "GUIDO," JULIAN DE ORMAECHEA,
CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA }
 vs. } Prize.
 THE GUIDO. }

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the steam vessel Guido, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, Capt. Nicoll Ludlow, of the United States Navy, in and with the United States ships of war the "Terror," "Machias," and "Foote," her officers and crew, did on the 27 day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said Guido, with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said Guido, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd)

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and motion issue as prayed, returnable 14th day of May, A. D. 1898, at 10.30 a. m.

Entered as of course.

(S'd)

E. O. LOCKE, *Clerk,*
 By J. OTTO, *D'y Clerk.*

(Endorsed:) Filed April 28th, 1898. (S'd) E. O. Locke, clerk.

2 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Guido and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 14th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 28 day of April, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-first.

(S'd)

E. O. LOCKE, *Clerk.*
J. OTTO, *D'y Clerk.*

(Endorsed :) Received the within writ of attachment April 28th, 1898, and duly executed as within commanded by attaching and taking into custody the Spanish steamship Guido. (S'd) John F. Horr, U. S. marshal, so. dist. Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 28th, 1898. (S'd) E. O. Locke, clerk.

3 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

Whereas on the 28th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court their libel against the Spanish steamer Guido in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. Terror, U. S. S. Machias, and U. S. torpedo boat Foote on April 27th, 1898.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said steamer Guido; that monition may issue, citing all parties having or claiming any interest or property in said steamer Guido to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for services in said cause, and that the said steamer Guido may be condemned and sold if to pay said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises

as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Saturday, the 14th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said steamer Guido to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Saturday, the 14th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof, and by posting two such other copies in the most public — of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 14th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 28th day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-first.

(S'd)

E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk*.

(Endorsed :) Received the within writ of monition April 28th, 1898, and duly executed it on the same day by reading to the master of the S. S. Guido and posting two copies as within commanded. (S'd) John F. Horr, U. S. marshal, so. dist. Fla.. (S'd) by Alfred Atchison, deputy marshal. Filed April 29th, 1898. (S'd) E. O. Locke, clerk.

4 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

And now comes Julian de Ormaechea, master, and as such the lawful bailee of the steamer Guido, and, intervening as such bailee for the interests of the owners of the said steamer, according to the annexed test affidavit, appears before this honorable court and makes claim to the said steamer, her engines, etc., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamer, her cargo, etc., as prize of war, and he avers that the said steamer was not and is not lawful prize, and *and* he prays on behalf of the owners of the said

steamer, for and in behalf of whom he is duly authorized to make this claim, to be permitted to defend accordingly, and to show cause, pursuant to the terms of the monition herein issued and served upon the said steamship and upon the said master, as bailee, why the said steamship, her engines, etc., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she would not be condemned as lawful prize of war, but should be restored, with damages and costs.

JULIAN DE ORMAECHEA.

Sworn to before me this May 23d, 1898.

[SEAL.]

J. OTTO, *Dep. Clerk.*

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON, *Proctors.*

5 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} Test Affidavit.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

COUNTY OF MONROE,
State of Florida, Southern District of Florida, } ss:

Julian de Ormaechea, being duly sworn, deposes and says that he is a citizen of the Kingdom of Spain; that his home is in Nundaca, in the province of Biscay, and that he is master of the steamer Guido, proceeded against in this action, and has been master of said steamer for four months last past. Previous to becoming master of the Guido he was an officer or master of vessels running under the management of G. H. Fletcher & Company, hereinafter referred to, for fifteen years.

Deponent further says that the said steamer Guido was built in Belfast, Ireland, in 1883, at or about which time a register for her was taken out in Spain, and she has since carried the flag of Spain and hailed from the port of Bilbao, Spain, where she has been registered in the name of Compania la Flecha, but has at all times been under the management of the house of G. H. Fletcher & Company, of Liverpool, England.

Deponent upon information and belief, such information having been acquired by communications from England since the examination of deponent in *preparatorio*, further says that the Compania la Flecha is a corporation organized and existing under and pursuant to the laws of the Kingdom of Spain,

the capital being divided into 1,000 shares, of which 200
6 shares are registered in the names of William Rudolph
Peter Jackson, member of the copartnership firm of G. H. Fletcher & Company, of Liverpool, England; 200 shares in the name of Thomas Hughes Jackson, of Liverpool, England; 200 shares in the name of Jose Serra y Font, of Barcelona, Spain;

200 shares in the name of Raimundo Real de Assua, of Bilbao, Spain, and 200 shares in the name of Ramon Real de Assua, of Bilbao, Spain, the said William Rudolph Peter Jackson and Thomas Hughes Jackson being domiciled in England and subjects of the United Kingdom of Great Britain and Ireland, and the said Jose Serra y Font, Raimundo Real de Assua, and Ramon Real de Assua being domiciled in Spain and subjects of the Kingdom of Spain; that while the shares of Compania la Flecha have been registered as aforesaid such registration has been merely formal, and the certificates of shares, the possession of which under the constitution of the company establishes the ownership thereof, have been for many years last past possessed by the said Thomas Hughes Jackson, who has been and still is the true and lawful owner of all the said 1,000 shares for value and thereby the sole beneficial owner of the said steamer Guido.

Deponent further states, upon like information and belief and by due authority of the said Thomas Hughes Jackson, that the said steamer has been sailed under the Spanish flag purely and solely for commercial reasons, her trade lying regularly in the line of Europe, Cuba, and the United States, and there being discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the colonies of Spain in consideration of dues paid by such steamers to the government of Spain, and that it has been the purpose and intent of the owner of the Guido to maintain her in such trade only so long as such trade might be lawfully and peacefully carried on, and to withdraw her from Spanish registry and from under the Spanish flag and restore her to British registry and the flag of Great Britain whenever such trade

7 should be disturbed; that it has been and is his purpose to make such transfer because of the pending war between the United States and the Kingdom of Spain, but that no opportunity therefor has been afforded, the steamer being at sea at the time of the outbreak of hostilities and not being in any port thereafter up to the time of her capture.

Deponent further says that he has known the Guido from the time she was built, and that during such time she has been engaged in the transportation of cargo for hire under the management of the said house of G. H. Fletcher & Company, of Liverpool. Her voyages have begun in Europe, where she has taken such cargo as was procurable for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for her port of final destination in Europe, either under charter or on the berth, such cargo from the United States being the principal cargo of the round voyage, and the round voyage occupying about three months, and she making in regular course about four voyages a year.

Deponent further says that said steamer Guido has a cargo capacity of about 5,000 tons, or about 4,400 tons dead weight, her net register being 2,064 tons and her gross register 3,300 tons; that on April 1 and 2 she took on board, at Liverpool, England, about 186 tons of general cargo, rice, beer, hardware, and preserves; and on April 5,

6, and 7, at Santander, Spain, about 300 tons of general cargo, consisting principally of flour, potatoes, and conserves; and at Corrunna about 200 tons of general cargo, principally flour, beans, hams, and vermicelli; and on April 10, at La Puebla, Spain, about 30 tons of general cargo, principally dry sardines, preserves, and beans. The entire cargo was between 700 and 800 tons, and occupied only a small portion of the cargo capacity of the vessel. Such cargo was laden for delivery at Havana, Matanzas, and Cienfuegos,

8 Cuba, it being the intent and purpose thence to proceed to a port of the United States for a return cargo across the Atlantic, and thus complete the voyage. The entire freight upon such cargo was less than \$4,000 in money of the United States, a sum altogether insufficient to cover the expenses of loading, transporting, and delivering the cargo, and offering no inducement for the voyage, the entire inducement for the voyage being the full cargo which the vessel would take in regular course from the United States to Europe, the freight upon which, at current rates, would be nearly, if not fully, \$30,000.

Deponent further says that he is not advised as to at what port of the United States he would have taken his cargo for the return voyage, or whether such cargo would have been taken under charter or on the berth, but that under the uniform practice of the owners of said steamer she would be bound, upon discharge of her cargo in Cuba, to some port of the United States.

Deponent further says that said steamer Guido sailed from La Puebla April 10 for Havana as her first port of call, and proceeded until about four o'clock in the morning of April 27, 1898, at which time, being then distant about seventy miles from Havana and about fourteen miles from Key Piedras, he then being in ignorance of any state of war between the United States of America and the Kingdom of Spain and without any notice thereof, and being without notice of any blockade of the coast of Cuba, and being in entire ignorance of such blockade, was fired upon by the United States ships of war Machias and Terror, and his steamer Guido, entirely without resistance on her part, was captured, with her cargo, by said vessels and sent into this port of Key West, where they have been libeled as prize of war.

9 Deponent further says that he is informed and believes that by the existing policy of the Government of the United States of America, as evidenced by repeated declarations of its executive and by proclamation of the President of the United States, issued and published April 26, 1898, as well as upon principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the President of the United States has directed that the war shall be conducted, the said steamer Guido was not at the time and place and under the circumstances of her seizure liable to be treated as enemy's property, but, on the contrary, having sailed from a foreign port prior to April 21, 1898, and being bound for a port of the United States, was exempt from capture. A copy of said proclamation is hereto annexed, marked "A," and deponent prays that reference may be made thereto.

Deponent further says that since giving his deposition *in preparatio* he has been informed and believes that his said steamer was at the time of capture and now is insured against all perils and adventures, including the risks of war, for her full value by underwriters of Lloyds, London, and that if the said vessel should be condemned as prize of war by this court the loss will rest upon and be borne by the said English underwriters, at whose request and by whose authority deponent represents these facts respecting her insurance to the court.

JULIAN DE ORMAECHEA.

Sworn to before me this 23d day of May, 1898.

[SEAL.]

J. OTTO, *Dep. Clerk.*

10

"A."

By the President of the United States of America :

A Proclamation.

Whereas, by an act of Congress approved April 25, 1898, it is declared that war exists, and that war has existed since the 21st, day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain, and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris,

Now, therefore I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

First. The neutral flag covers enemy's goods with the exception of contraband of war.

Second. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

Third. Blockades, in order to be binding, must be effective.

Fourth. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels, having on board
 11 any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Fifth. Any Spanish merchant vessel which prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart with-

out molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

Sixth. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest ground of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, etc.

WILLIAM McKINLEY.

Done at the Department of State, etc., this 26th day of April, etc.

(Endorsed:) Claim of Julian Ormaechea, as master, etc., to the steamer "Guid-," her engines, etc. Filed May 23d, 1898. E. O. Locke, clerk.

12 (*Motion for Further Proof and Order Denying the Same.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER GUIDO & HER CARGO.	

And now comes Julian Ormaechea, master, claimant herein, and upon his test affidavit herewith filed, and all other proceedings in the cause, asks leave to take further or additional proofs respecting the matters set forth in the said test affidavit.

Key West, May 27th, 1898.

(S'd)

JULIAN DE ORMAECHEA.
WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON, *Proctors.*

Upon consideration, the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd)

JAMES W. LOCKE,
U. S. District Judge.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

13 (*Abstract of Minutes of Court.*)

Spring Term U. S. District Court, Friday, May 20th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
<i>vs.</i>	
S. S. GUIDO & CARGO.	

Ordered that further time be granted the defendants in which to perfect their claims.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

SATURDAY, May 21st, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

MONDAY, May 23rd, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

14

TUESDAY, May 24th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

WEDNESDAY, May 25th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is argued and submitted and decision is reserved.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

(Decree.)

In the District Court of the United States, Southern District of Florida.

UNITED STATES
against
SPANISH STEAMER GUIDO & CARGO. } Prize.

This cause coming on to be heard upon the allegations of the libel, the claims of the master and the several parties to the cargo of said vessel, and it appearing that the vessel was enemy's property and did not come within the exemption of the proclamation of the President of the United States, and that she is subject to condemnation and forfeiture—

It is ordered that as such enemy's property she be condemned and forfeited to the United States as a legal prize of war, and that the marshal proceed to advertise and sell said vessel and deposit the proceeds thereof according to law.

It further appearing that the claims to the cargo do not fully prove the ownership of said cargo, it is ordered that the claimants herein have sixty days in which to make further proof.

Key West, Florida, May 27th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Abstract of Minutes.)

FRIDAY, May 27th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES
vs.
S. S. GUIDO & CARGO. } Prize.

Notice of appeal by attorneys for the claimants is given in open court.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

16 (Assignment of Errors.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,
against
THE STEAMER GUIDO & HER CARGO; JULIAN ORMAECHEA, Claimant & Appellant. }

And now the above-named claimant and appellant comes and makes assignment of error in respect of the decision and decree of the said district court:

First. In that the said district court held that the steamer Guido was lawful prize of war.

Second. In that the said district court did not hold that the said steamer Guido was not lawful prize of war.

Third. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation as being property owned by neutrals.

Fourth. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation under the fifth article or paragraph of the proclamation issued by the President of the United States of America under date of April 26th, 1898, and referred to in the test affidavit of the claimant.

Fifth. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation under the other provisions of the said proclamation.

Sixth. In that the said district court did not hold and refused to hold that the said steamer Guido had, prior to April 21, 17 1898, sailed from a foreign port bound to a port or place in the United States.

Seventh. In that the said district court did not authorize, allow, and order further and additional proofs respecting the matters set forth in the claimant's test affidavit or in respect of any of the matters therein set forth.

(S'd)

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON,

Proctors for Claimant.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Petition of Appeal and Order.)

District Court of the United States for the Southern District of
Florida.

UNITED STATES OF AMERICA, Libellants & Appellees, }
against

THE STEAMER GUIDO & HER CARGO; JULIA- ORMAECHEA, }
Claimant & Appellant.

And now Julia- de Ormaechea, claimant, considering himself aggrieved by the decision and decree of condemnation herein, and alleging error in the said decree, appears in open court and appeals therefrom to the Supreme Court of the United States. He presents herewith an assignment of the errors complained of and a bond for costs, with surety, in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record, including the ship's papers used upon the trial, his test affidavit, and all other proceedings, may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that

the said appeal may be heard and determined by the Supreme Court of the United States.

(S'd)

JULIAN DE ORMAECHEA.

WILHELMUS MYNDERSE AND

G. BOWNE PATTERSON,

Proctors for Claimant.

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond upon appeal, the appeal of the claimant, Julia de Ormaechea, is hereby allowed.

Key West, May 28th, 1898.

(S'd)

JAMES W. LOCKE,

*District Judge of the United States for the
Southern District of Florida.*

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(Bond.)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA	}
<i>against</i>	
THE STEAMER GUIDO & HER CARGO.	

Know all men by these presents that we, Julian de Ormaechea, principal, and the American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in a cause of prize pending therein, wherein The United States is libellant against The Steamship Guido and her cargo, and the said Julian de Ormaechea is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having filing his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Julian de Ormaechea shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd)

(S'd)

J. DE ORMAECHEA.

THE AMERICAN SURETY COMPANY OF NEW YORK,

By GEO. W. ALLEN, *Att'y-in-fact.*

Taken and acknowledged before me May 28th, 1898.

(S'd)

JULIUS OTTO,

U. S. Comm'rs.

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

20

(Citation and Proof of Service.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the United States of America, J. W. Stripling, district attorney, Greeting:

You are hereby cited and admonished to be and appear before the next United States Supreme Court within the time limited by law, pursuant to an appeal filed in the clerk's office of the United States district court for the southern district of Florida, wherein Julian de Ormaechea, claimant of the steamer Guido, is appellant, and The United States of America are appellees, to show cause, if any there be, why the decree rendered against the said steamer Guido and said appellant, as in the appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

(S'd)

JAMES W. LOCKE,

District Judge, Southern District of Florida.

Service of a true copy of the above citation is hereby acknowledged.

May 28th, 1898.

(S'd)

J. N. STRIPLING, U. S. Att'y.

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

21

(Order on Claim for Cargo.)

In the District Court of the United States, Southern District of Florida.

UNITED STATES

vs.

STEAMER GUIDO & CARGO. } Prize.

In the matter of the claim of Kaltenbach & Schmidt, of Liverpool, for 2 barrels and 68 cases of medicines and drugs and mineral waters; of Gotscher & Co., of Birmingham, for 153 cases of hardware and 290 pieces of hardware; of G. H. Fletcher & Co., of Liverpool, for 500 bags of rice; of Kleinwort, Sons & Co., of London, for 100 cases of fish; of George Younger & Sons, of Alloa, Scotland, for 20 cases of beer; of Eckenstein & Mead for 300 bags of rice; of Herman

Schurhoff & Co., of Birmingham, for 4 cases of gutters and 171 bundles of iron, being part of the cargo of the said steamer Guido, having come on to be heard upon the claims and test affidavits of the claimants, and it appearing that the same was not sufficient to prove conclusively the property to be in the claimants, and it having been ordered that the said claimants have leave to make further proof, but it further appearing that said property *being* liable to deteriorate and become injured by the delay pending such further investigation, or that the costs of keeping the same will be disproportionate to its value, it is ordered that the marshal proceed to advertise and sell said property and deposit the proceeds as provided by law, to abide the further judgment and decree of the court upon said claim.

Jacksonville, Fla., June 6th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

- 22 District Court of the United States for the Southern District of Fla.

UNITED STATES OF AMERICA
against
 THE STEAMER "GUIDO" AND HER CARGO. } In Prize.

Please take notice, upon the proceedings had in this action and upon the annexed affidavit of Wilhelmus Mynderse, we shall make application before the Honorable James W. Locke, district judge, in the United States court-rooms, in the city of Jacksonville, Florida, on Tuesday, June 21, 1898, at three o'clock in the afternoon of that day, that the said steamer "Guido" be ordered to New York for sale, and for such other, further, and different relief as in law and justice should be administered.

New York, June 17th, 1898.

WILHELMUS MYNDERSE,
Proctor for Claimants.

To Hon. Joseph N. Stripling, United States district attorney;
 Edward K. Jones, Esq., special counsel for libellant.

STATE OF NEW YORK, }
Southern District of New York, } ss:

Wilhelmus Mynderse, being duly sworn, deposes and says that he is one of the proctors for the claimants of the steamer "Guido" in the above-entitled matter.

Deponent further says that the cargo of the Guido has been discharged, and that her officers and crew have left her or are on the point of leaving her for the purpose of returning to Spain, and that the steamer will seriously depreciate and deteriorate if left without a crew to keep her machinery department and other departments in order.

Deponent further says that the steamer "Guido" is a large and

valuable steamer, and that the most advantageous market for her will be the market of New York.

WILHELMUS MYNDERSE.

Sworn to before me this 17 day of June, 1898.

[SEAL.]

FREDERICK GREEN,
Notary Public, N. Y. Co.

Endorsed: Affidavit and notice. Filed 21st day of June, 1898.
E. O. Locke, clerk.

Due service of a copy of the within notice and affidavit is hereby admitted this 17th day of June, 1898.

EDWARD K. JONES,
Special Counsel U. S. Gov't in Prize Cases.

24 District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

The claimant of the steamer Guido having made application, upon the proceedings had herein and upon the affidavit of Wilhelmus Mynderse, verified June 17th, 1898, that the said steamer be ordered to New York for sale, now, after hearing Frederick Green in support of said application and Hon. Joseph N. Stripling, United States attorney, appearing for the United States of America, it is hereby, upon motion of Wilhelmus Mynderse, proctor for said claimant—

Ordered that the said steamer "Guido" be taken by the marshal to the port of New York for sale there.

Jacksonville, Fla., June 22, 1898.

JAMES W. LOCKE, Judge.

Endorsed: Order that steamer be taken to New York for sale. Filed 22nd June, 1898. E. O. Locke, clerk.

25 Endorsed: Filed June 6th, 1898. (S'd) E. O. Locke.

(Order Extending Time to File Record.)

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA	}
<i>vs.</i>	
THE STEAMER GUIDO & HER CARGO.	

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wil-

helmus Mynderse, proctor for the claimants of said steamer and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be, and hereby is, extended to thirty days from June 25th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd)

J. N. STRIPLING,

U. S. Attorney.

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

26 Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court, to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what coun-

try were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they?

Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe, that at the *at the* time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

27 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, toru, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other per-

son, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or person- who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long — time were they to last? Was any duty or fee payable, and paid,

for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? and if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any
 28 license or passport from any foreign power or authority during the voyage? If so, state from whom — been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole — which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

29 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA }
 vs. } Prize.
 SPANISH STEAMSHIP "GUIDO."

Deposition of Julian Ormaechea, a witness produced, sworn, and examined in *preparatorio* on the 14th day of May, A. D. 1898, at the court-house, Key West, in said district, on the standing interrogatories established by this honorable court, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Guido."

1. To the 1st interrogatory deponent answers:

My name is Julian Ormaechea. I was born in Mondaco, which is my permanent place of abode and has been all my life. For the last seven years I have been navigating. I am a subject of Spain. My wife and family live in Mondaco, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking and seizing of the Guido. The ship has a royal patent issued by the Spanish government.

3. To the 3rd interrogatory deponent answers:

30 The ship was 14 miles N. W. off Cardenas on the 27th day of April, at about 4 a. m., 1898, when she was captured. The ship was seized on account of the war which existed between Spain and the United States. The ship sailed under the colors of Spain and was after her capture carried into the port of Key West. We made no resistance at the time of the capture. I was captured by the U. S. S. Machias. I did not see any other vessel present at the time my ship was captured, but when day came I saw another war ship.

4. To the 4th interrogatory deponent answers:

I am the master of the Guido. I was appointed to the command of the ship by the agents at Liverpool, Messrs. G. H. Fletcher & Co. I took possession at Liverpool about four months ago.

5. To the 5th interrogatory deponent answers:

The tonnage of the vessel is 2,054 tons. She had on board 37 mariners, who are all Spanish subjects. All of the crew are registered in the Spanish naval reserve at different ports in Spain. They came on board at different times and at different ports.

6. To the 6th interrogatory deponent answers:

None of the officers or crew of the ship had any interest of any description in the ship or cargo. I have commanded the ship only four months. I saw her many times in Liverpool. She was built in Belfast, Ireland.

7. To the 7th interrogatory deponent answers:

31 The vessel's name is Guido. She has been called by that name since she was built.

Her last voyage began at Liverpool, England, and was to have ended at Liverpool. I cleared from La Puebla, Spain, which is the

last clearing port before my ship was captured. On our last voyage we started from Liverpool and touched at Santander, Corrunia, and La Puebla, and were making for Havana when we were captured.

8. To the 8th interrogatory deponent answers:

The said ship had on board a general cargo when she was captured. The said cargo was put on board the first days of April, 1898, which was taken on board at the several ports last named. We had from Liverpool—we had rice, hardware, and can goods, beer, and mineral waters. At Santander we took on potatoes, flour, can goods, etc. At La Corrunia we took on flour, string beans, wine, chocolate, etc. At La Puebla we took on sardines and can goods. No part of the cargo of said vessel had been unladen until after the capture of the ship.

9. To the 9th interrogatory deponent answers:

The owners of the vessel at the time of the seizure were the La Fletcher Company. I do not know their nationality by birth. The general manager of the company resides in Barcelona, Spain. The company resides at Bilboa, Spain. They have been living in Bilboa for over 19 years, during which time I have been working
32 for them. I do not know who they are subjects of. It is a Spanish company. They have been in possession of the vessel for about 14 years. They had the ship built for their company.

10. To the 10th interrogatory deponent answers:

The ship has never been sold since she was built.

11. To the 11th interrogatory deponent answers:

I have already stated all I know as to the loading of cargo and the quantity of each kind.

12. To the 12th interrogatory deponent answers:

I do not know the respective names of the owners or consignees of said goods. They are Spaniards and Englishmen. Some of the laders live in England and some in Spain; the consignees live in Cuba. I do not know anything in relation to the ownership of the property. I do not know the names of the parties. The manifest will show all this.

13. To the 13th interrogatory deponent answers:

The goods shipped from Liverpool, the agent always attended to the bills of lading. I have a copy of said bills of lading from the agent. I think the agent keeps one copy. At Santander the agent always attended to the bills of lading. He gave me a copy of all bills of lading for the goods shipped from that port. He, I believe,
33 kept a copy. In the other Spanish ports, I gave one bill of lading for each articles shipped, and I kept a copy. I delivered these copies of bills of lading to the prize master.

14. To the 14th interrogatory deponent answers:

I do not believe there are in the United States any bills of lading, invoices, letters, or instruments relative to the ship and cargo, except those delivered to the prize master by me at the time of my capture.

15. To the 15th interrogatory deponent answers:

There was no charter-party for the voyage.

16. To the 16th interrogatory deponent answers :

I delivered all the papers that were on board my vessel to the prize master. None of them were destroyed, concealed, thrown overboard, burnt or concealed.

17. To the 17th interrogatory deponent answers :

The ship has never before been seized and condemned as a prize previous to this.

18. To the 18th interrogatory deponent answers :

I loose my wages by this seizure. I have not received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which I have sustained or may sustain by this capture and detention.

19. To the 19th interrogatory deponent answers :

I do not know whether or not the ship or any part of the cargo is insured.

20. To the 20th interrogatory deponent answers :

In case we had arrived at our port of destination, the cargo, upon being unladen, would have become the property of those persons expressed in the manifest.

21. To the 21st interrogatory deponent answers :

Part of this cargo was taken on board at Liverpool and part was taken on in Spain. I believe the same were produced in England and Spain.

22. To the 22nd interrogatory deponent answers :

The cargo from Liverpool and Santander was taken on from the wharf. The cargo from La Corrunia and La Puebla was taken from the dock in lighters.

23. To the 23rd interrogatory deponent answers :

This interrogatory has been fully answered in my answer to the 14th interrogatory. There are no bills of lading and invoices except those found on my ship.

24. To the 24th interrogatory deponent answers :

The only papers delivered out of the ship were those delivered to the prize master at the time the ship was captured.

25. To the 25th interrogatory deponent answers :

The bulk of the cargo was not broken until after the capture, when it was broken by the U. S. marshal.

26. To the 26th interrogatory deponent answers :

There were two passengers on board. They were not concealed at the time of the capture. I do not know their names. I do not know their rank or profession, but they are Spanish steerage passengers. They were taken on board at Santander, and were going to Havana. I do not know the business they were going on. There were no officers, soldiers, or marines on board. There were no citizens of the United States on board or secreted.

27th. To the 27th interrogatory deponent answers :

All papers found on board the ship were true and correct. The ship had a royal patent from the Spanish government. If the vessel should be restored she would belong to the persons said to be the owners.

28. To the 28th interrogatory deponent answers:

I have sent a letter to Liverpool informing the agents that I had been captured. I wrote home to my family. I gave the letters to the marshal to mail; written or signed no letters or documents.

29. To the 29th interrogatory deponent answers:

36 The ship was steering her course for Havana when she was captured. Her course was not altered upon the appearance of the vessel which captured us. The course was at all times directed toward the place or port which she was destined by her papers. The ship was not at the time of the capture or previous sailing wide of her port of destination. The ship was about seventy miles from Havana. After the capture her course was altered by the prize master, and she was brought into the port of Key West.

30. To the 30th interrogatory deponent answers:

The ship has never been sold or transferred. If the ship were to be restored, she would belong to the persons now said to be the owners.

31. To the 31st interrogatory deponent answers:

We had no guns or cannon of any description on board. We had no arms and ammunition on board.

32.— the 32nd interrogatory deponent answers:

I have stated all that I know or believe concerning the true property and destination of the ship and her cargo.

JULIAN DE ORMACEHEA.

Sworn to and subscribed before me this May 14th, 1898.

J. M. PHIPPS,

Prize Commissioner.

37 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA	} Prize.
vs.	
SPANISH STEAMSHIP "GUIDO."	

Deposition of Jesus Echevarria, a witness produced, sworn, and examined at the United States court-house at Key West, in said district, on the 14th day of May, A. D. 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness being produced for the purpose of such examination in behalf of the captors of a certain vessel called the "Guido."

1. To the 1st interrogatory deponent answers:

My name is Jesus Echevarria; I was born at Mondacco, Spain, which is my present place of residence, where I have resided during the whole of my life. I am a subject of Spain. I am married and my wife and family reside in Mondacco.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking and seizing of the ship. She had a royal patent issued by the Spanish government.

38 3. To the 3rd interrogatory deponent answers:

The ship was captured about seventeen miles from Cayo Piedra light-house, Cuba, on the 27th day of April, at about 4.15 a. m., 1898. I don't know why she was seized. The ship sailed under the Spanish flag, and she was carried into the port of Key West after the capture. We had no other colors on board. The ship made no resistance at the time of her capture. The ship was captured by the Terror and Machias, U. S. men-of-war. No other ships were in sight.

4. To the 4th interrogatory deponent answers:

The name of the master who commanded this ship was Julian Ormachea. I have known the captain for since I was a boy; many years. I do not know who appointed him to the command of the vessel. I do not know when or *who* the captain took possession of said vessel or who delivered the possession to him. The captain lives in Mondacco, Spain, which is his fixed place of abode. The captain is a subject of Spain. He is a married man and his family lives in Mondacco, Spain.

5. To the 5th interrogatory deponent answers:

The vessel is of 2,064 registered tons. Her mariners number 37 men, including the captain. They are all registered at several ports in Spain and belong to the Spanish naval reserve. I do not
39 belong to the naval reserve, as I paid for a substitute. They came on board at different ports.

6. To the 6th interrogatory deponent answers:

None of the officers or men had any share or interest in the ship or cargo. I belonged to the vessel at the time she was seized in the capacity of first officer. I have known the ship for eight years. I first saw her in Santander, Spain, and she was built in Belfast, Ireland.

7. To the 7th interrogatory deponent answers:

The vessel is named Guido, and she has been named by that name since she was built. All the business was transacted at Santander, Spain, and that was our starting point of our trips. The men made contracts from said place, and we always received our wages from that point. We used to sail from Liverpool, but that has been changed. We last cleared from La Puebla, Spain, before we were captured.

8. To the 8th interrogatory deponent answers:

The vessel had a general cargo when she started out on her last voyage, when she was captured. The said cargo was put on board about the first part of April, 1898. I cannot state the different species of lading and the quantity of each sort. A portion of the cargo was unladen at Key West after we were captured.

9. To the 9th interrogatory deponent answers:

40 I do not know who the owners were at the time she was seized. I do not know where they live.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale.

11. To the 11th interrogatory deponent answers:

The said cargo was put on board at different ports at different

time. I do not know the quantities that were put on board at the different places.

12. To the 12th interrogatory deponent answers :

I do not know the names of the respective laders, owners, or consignees of the goods.

13. To the 13th interrogatory deponent answers :

I do not know anything about any bills of lading.

14. To the 14th interrogatory deponent answers :

I do not know anything about any bills of lading or invoices being in the United States.

15. To the 15th interrogatory deponent answers :

I do not know whether or not there was a charter-party for the voyage.

16. To the 16th interrogatory deponent answers :

I do not know what papers, bills of lading, letters, or other writings were on board at the time the ship took her departure

41 from the last clearing port. I did not see any of the papers burnt, destroyed, thrown overboard, or concealed. I do not know anything about it.

17. To the 17th interrogatory deponent answers :

The ship, to the best of my knowledge, has never before been seized or condemned as a prize.

18. To the 18th interrogatory deponent answers :

I have lost my wages by the capture of this ship. I have not received any satisfaction or promise of satisfaction for any loss which I may sustain or which I have sustained by reason of the capture.

19. To the 19th interrogatory deponent answers :

I do not know whether or not the said ship and cargo were insured.

20. To the 20th interrogatory deponent answers :

I do not know anything about the property belonging to the consignee or shipper.

21. To the 21st interrogatory deponent answers :

I do not know where the cargo was produced, grown, or manufactured.

22. To the 22nd interrogatory deponent answers :

The cargo was taken from the wharf and the lighters.

42 23. To the 23rd interrogatory deponent answers :

I do not know anything about any bills of lading, invoices, or other papers concerning the ship and cargo being in any other country or on board any other ship.

24. To the 24th interrogatory deponent answers :

There were no papers delivered out of or taken from the ship except those which were delivered to the prize master.

25. To the 25th interrogatory deponent answers :

The bulk of the cargo was not broken during the voyage, but after our capture and when we were brought into port of Key West the same was broken by the United States marshal.

26. To the 26th interrogatory deponent answers :

There were two passengers. I do not know their names. They

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

(Order Regarding Original Documents.)

U. S. District Court, Southern District of Florida.

THE UNITED STATES }
vs. } Prize.
 S. S. GUIDO & CARGO. }

Ordered that the clerk of this court transmit to the Supreme Court of the United States the original documents produced in this case by the prize master and prize commissioners and submitted in evidence in the hearing herein for inspection, if desired, in
 45 said Supreme Court upon the hearing of the appeal herein; that the same be securely sealed and a schedule thereof made and attached thereto, and a copy of said schedule be retained by the clerk.

Said papers, after inspection and disposition of this case by the said appellate court, to be returned to the files of this court.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

46 *(Order Extending Time to File Record.)*

District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA, Libellants, }
against } For Prize.
 THE STEAMER GUIDO AND HER CARGO. }

It appearing to me, the judge who signed the citation herein, that good cause exists why the record on appeal herein to the Supreme Court of the United States has not and cannot be filed and the said case docketed in the Supreme Court within the time limited by the rules of the Supreme Court and the order heretofore made herein, I do now order that the time within which said record shall be filed and the said case docketed in the Supreme Court be, and the same is hereby, enlarged to and including the first day of September, 1898.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

We consent to the foregoing order.

(S'd)

WILHELMUS MYNDERSE.

(S'd)

J. N. STRIPLING, *U. S. Att'y.*

47

THE UNITED STATES

vs.

THE SPANISH STEAMSHIPS "BUENA VENTURA," "PANAMA,"
 "Catalina," "Miguel Jover," "Pedro," and "Guido," } Prize.
 and Cargoes.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels, the "Buena Ventura" cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida between Key West and Cuba on the 22nd, by the U. S. S. S. "Nashville;" the "Panama" cleared and sailed from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S. S. "Mangrove" while approaching that port; the "Catalina" and the "Miguel Jover," laden with cotton and staves, cleared from New Orleans on the 21st of the same month and sailed the evening of the same day for Barcelona and Genoa; the "Catalina" was captured by the U. S. S. S. "Detroit" and the "Miguel Jover" by the U. S. S. S. "Helena," both on the 24th; the "Pedro," which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. S. "New York," and the "Guido" from Liverpool, bound for Havana by the way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. S. "Terror."

They are all Spanish vessels, sailing under the Spanish flag with royal patents, officered and manned by Spaniards, and, with the exception of the Pedro and the Guido, no question has been raised as to their being enemy's property.

They were all merchant vessels engaged in regular lines of commerce, and this and the hardship and injustice of the captures before a declaration of war has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive and not upon the principles of policy or equity, and while prize courts, where questions of doubt arise, yield as far as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the bel-igerent had a right to capture the property of the opposing bel-igerent or antagonist, under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by the gradual advance of civilization until by the prize law of today, as accepted, the captor has the right, in the absence of any declaration

or exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be liberally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found; it cannot be presumed from international history or policy, nor from the principles of justice, generosity, or humanity. The important questions in the cases now pending arise upon the construction of the proclamation of the President of the United States of April 26th, 1898.

As it is construed by the claimants of these several steamships each one of them comes within some provision of this proclamation, which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors, not one of them is exempt.

The proclamation is as follows :

"By the President of the United States of America :

"A Proclamation.

"Whereas, by an act of Congress approved April 25th, 1898, it is declared that war exists, and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain ; and

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris ;

"Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

50 "1. The neutral flag covers enemy's goods with the exception of contraband of war.

"2. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

"3. Blockades, in order to be binding, must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed until May 21st, 1898, inclusive for loading their cargoes and departing from such ports or places ; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term : Provided, that nothing herein continued shall apply to Spanish vessels hav-

ing on board any officer in the military or naval service of the enemy: or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

"5. Any Spanish merchant vessel which, prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest ground of suspicion of a violation of law in respect of contraband or blockade.

51 "In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington on the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

"WM. McKINLEY.

"By the President:

"ALVEY A. ADEE,

"*Acting Secretary of State.*"

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that the proclamation has followed the humane practice of all nations more recently established; but reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either

52 the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in any port or places within the United States" to give them the right of being allowed until May 21st, 1898, for loading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this

depends the cases of the "Catalina" and of the "Miguel Jover," which cleared from New Orleans the evening of April 21, 1898.

It is urged by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date," or their equivalent, should be understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be understood is "now."

Which of these views is in harmony with the present view of nations and sanctioned by their recent practice?

Formerly at the outbreak of war nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports; in 1870, thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco-Turkish war), fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these

cases the immunity attached from the outbreak of the war.

53 Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war, or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same number of days was intended; which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, what was the intention of the legislators?

It is contended that, the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war it is

54 not considered that the attaching of any such right should influence the decision in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognized the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in the harbor of the United States upon April 21st, 1898, and exempt them from seizure. This will effect the release of the "Catalina" and the "Miguel Jover."

In regard to the cargoes of such vessels it is not to be considered that it should be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free and then have them seized, so that the cargoes should be liable to condemnation. What makes the free vessels makes the free cargoes, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without difficulty in the cases against the "Pedro" and the "Guido."

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade, with outward cargoes from European—particularly 55 Spanish—ports to Cuban ports to discharge, thence to some part of the United States, usually Pensacola, for a load of lumber for the return voyage. The "Guido" had sailed from Liverpool by way of Santander, Coruna, and La Pueblo, and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The "Pedro," a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports; she had been into Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo, she was under charter to proceed to Pensacola to load for lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact that their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo, brings them within the provisions of the fifth article of the proclamation as being ves-

sels which prior to April 21st, 1898, had sailed from a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases were cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold :
56 First, it excuses a vessel which, ignorant of the condition of war, comes directly within the power of the enemy, and is therefore to that extent a protection to commerce and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them; secondly, as the material increase of a nation's possession is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of the reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores. In fact, a state of war existed before the "Pedro" left Havana, and having no cargo to bring to this country, they were only coming to take property away and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that although they were owned by a Spanish corporation of Bilboa, La Flecha, the general managers of which were Spanish citizens and resided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien or *or* equitable ownership of the rest of the stock, so that in reality the vessels were neutral property and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize whatever may be the domicile of the partners,
57 and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can an equitable interest in the stock of a corporation which is the owner. These vessels were owned by a Spanish corporation, sailing under a royal Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly if not quite all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The "Panama" sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation may have issued, no declaration made, or no action of the legislative department of the Government had. This date has been declared by the act

of Congress of April 25th, 1898, and by the proclamation
58 of the President of the next day, to have been April 21st, 1898, including that day, so that any Spanish property afloat captured from that time became liable to condemnation, unless exempt by the executive proclamation.

In the case of the "Buena Ventura" it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection as to a vessel coming from a foreign port, but that was not the case. When captured, she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture; she was an enemy's vessel, found upon the high seas at the commencement of the war and not coming within the exceptions of the proclamation.

Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declaring it not subject to condemnation cannot be entertained for a moment. The policy and law declared in the executive proclamation is considered to be the law by which this court is gov-
59 erned, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cargoes of the "Pedro" and the "Guido" appear from the testimony and the papers found on board to have been mostly

shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The "Panama," after touching at Havana, was bound for Vera Cruz, and a large portion of her cargo is shown to have been shipped to Mexico and consigned to residents, and, presumptively, citizens of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but, where claims and test affidavits have been filed combating that presumption, time for further proof will be given, as in the cases of the "Pedro" and the "Guido." When the property can be immediately restored to the claimants, it will be so ordered, but otherwise it will be sold, pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

60

EXHIBIT "A" (from Ship's Documents).

No. 116.

Real Patente de Navegacion Mercantil.

Comandancia de Marina de Habana.

Don Alfonso XIII.

Por la Gracia de Dios y la Constitucion, Rey de Espana, y en su Nombre, y Durante su Menor Edad,

La Reina Regente del Reino.

Por cuanto he concedido permiso á D. Jose Serra y Font representante de la Ca. La Flecha, vecino y del comercio de Bilbao, para que el Vapor Guido, de su propiedad del folio 191 de la 5 a lista de embarcaciones de la inscripcion del puerto de Bilbao de 109' 70 de eslora 12' 50 de manga y 8. de puntal, pueda navegar y comerciar en todos las mares y puertos del Globo.

Por tanto, orden que, constando la pertencia de la embarcacion al referido D. Jose Serra y Font, ó á otro subdito espanol, el Comandante de Marina, sus subalternos ó cualquiera otro funcionario á quien corresponda, concurren á facilitarle lo que necesitare, asi por lo respectivo á su armamento, como por lo que mira á su tripulacion, de que debiera formase lista, y obligarse al Capitan que mande dicho buque á cuidar de su conservacion y responder de sus faltas, segun previenen las Ordenanzas de Marina, permitiendole salir á navegar y comerciar bajo las reglas establecidas.

Y mando á los Oficiales Generales ó particulares Comandantes de

61 escudra y bajeles á los Capitanes Generales de los Departamentos de Marina y demas autoridades de ella y otros cualesquiera Oficiales ó dependientes de la Armada; á los Capitanes y Comandantes Generales de distritos y provincias, á los autoridades civiles y judiciales de los puertos de estos dominios, y á todos los demas subditos espanoles á quienes correspondiere, no le pongan embarazo ni causen molestia ó detencion alguna, antes bien le auxilien ó faciliten lo que hubiere menester para su regular navegacion y legitimo comercio. Y á los subditos de Reyes, Principes y Republicas amigos y aliadas; á los Jefes, Gobernadores ó Comandantes de sus provincias, plazas, escuadras y bajeles, recomiendo que asimismo no le pongan impedimento á su libre navegacion, entrada, salida ó detencion en los puertos á los cuales deliberadamente ó por accidente se condujere, y le permitan ejercer en ellos su legitimo comercio, bastimentarse y proveerse de lo necesario para continuarla; á cuyo fin he mandado despachar esta Real Patente, la cual, firmada por Mi y refrendada por el Ministro de Marina, servira y tendra fuerza considerandose en todas circunstancias como exclusivamente inherente al Vapor Guido interin este buque se halle bajo el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo.

Dado en Palacio á quince de Noviembre de Mil ochocientos ochenta y siete.

Por la Reina Regente.

(Ministerio de Marina.)

RAFIEL ROSARIOS.

62		Toneladas.
	Total	3.133' 01
	Tonelaje: Correspondiente á los descuentos.....	1.068' 40
	Neto	2.064' 61

Esta Real Patente de Navegacion Mercantil para todos los mares del Globo, numero 116 se expide por mi el infrascrito Comandante de Marina, en el dia de esta fecha, extendida á favor del Vapor Guido del folio 191 de la lista de embarcacinoes de esta Provincia naval, habiendo precedido el cumplimiento de todos los requisitos prevenidos en las disposiciones que rigen sobre esta materia, y con la obligacion de devolverlo ó estar á las resultas de su perdida ó extravio, y hacer en todo tiempo buen uso de el y no ejercitarse en el comercio ilícito.

Dado en Habana, á 1' de Abril de 1890.

M. MIRANDE.

NOTA.—Esta Patente debera contener siempre tantos sellos por valor de setenta reales vellon como periodos de tres anos cuente desde la fecha de su expedicion; bien entendido que dichos sellos deberan colocarse en todo el primer ano de cada periodo bajo la pena una multa de cinco reales vellon por cada tonelada de las que mida el buque, en caso de omision injustificable, y cuya se cargara al dueno del mismo.

Los sellos de que se trata seran precisamente los designados para este objecto en las Reales ordens vigentes.

63 EXHIBIT "B" (from Ship's Documents).

No. 271. Original. Port of Liverpool.

UNITED STATES — AMERICA :

Bill of Health.

I, W. J. Sulis, vice & deputy consul of the United States (the person authorized to issue the bill) at the port of Liverpool, do hereby state that the vessel hereinafter named cleared from this port under the following circumstances :

Name of vessel, Guido; nationality, Spanish; rig, schooner; master, Julian de Ormaechea; tonnage, gross, 3,133; net, 2,065 tons; iron or wood, steel; number of compartments for cargo, 4; for steerage passengers, none; for crew, 3; name of medical officer, none.

Number of officers, 3; number of members of officers' families, none; number of crew, including petty officers, 33; number of passengers, cabin, none; number of passengers, steerage, none; number of persons on board, all told, 36.

Port of departure, Liverpool.

Where last from, New Orleans.

Number of cases of sickness and character of same during last voyage, none.

Vessel engaged in Atlantic trade, and plies between Liverpool, Spain, Cuba, and the United States.

Sanitary condition of vessel, good.

Nature, sanitary history, and condition of cargo, water ballast, good.

Source and wholesomeness of water supply, Liverpool corporation, good.

64 Source and wholesomeness of food supply, Liverpool & Spain, good.

Sanitary history & health of officers & crew, good.

Sanitary history & health of passengers, cabin, —.

Sanitary health & history of passengers, steerage, —.

Sanitary history and condition of their effects, —.

Prevailing diseases at port and vicinity, —.

Location of vessel while discharging and loading—open bay or wharf—open bay.

Number of Cases and Deaths from the Following-named Diseases During the Past Two Weeks Ending 24th Instant.

Diseases.	No. cases.	No. deaths.	Remarks.
			(Any conditions affecting the public health existing in the port of departure or vicinity to be here stated. When there are no cases or deaths entry to that effect must be made.)
Yellow fever.....	None.	None.	
Asiatic cholera.....	"	"	
Cholera nostras or cholerine.....	"	"	
Smallpox.....	"	"	
Typhus.....	"	"	
Plague.....	"	"	
Relapsing fever...	"	"	

I certify that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for a port (unknown) in the United States of America, via Spain & Cuba (ports unknown).

Given under my hand and seal this 1st day of April, 1898.

[SEAL.]

(Signature of consular officer :) W. J. SULIS,

[SEAL.]

Vice & Deputy Consul of the United States of America at Liverpool.

Rec'd fee, \$5, or £1 0 3.

65 Endorsed: Consulate of the United States, Corunna, Spain,
April 8th, 1898. Sanitary condition of this port, good. For
original & duplicate. Rec'd fee, \$2.50. Julio Harmony, U. S.
consul.

Por no haber Consul de los Estados Unidos en esta plaza Certifico
que la salud publica, tanto en la localidad como en sus cercanias,
es completamente satisfactoria.

Santander 6 de Abril, 1898.

(Alcaldia Constitucional de Santander.)

El alcalde, JOSE DEL CINOL.

Form 1931a.

UNITED STATES OF AMERICA :

Bill of Health.

Port of Liverpool.

Name of vessel, Guido.

Name of master, Ormaechea.

From Liverpool, Spain, & Cuba.

To a port in the U. States.

Date of issue, 1st April, 1898.

66

EXHIBIT "C" (from Ship's Documents).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80147.

Certificate of Payment of Tonnage Duty.

(To be used in — cases under seals of collector & naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on the 7th day of Dec'b'r, eighteen hundred and ninety-seven, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Spanish S. S. Guido—Conzalegui, master—of Bilboa, by Melilla & Stoddard, as per American admeasurement, 2,065 tons, amounting to one hundred and twenty-three dollars and ninety cents.

The above payment was made on entry from Manchester, Eng., on the 7th day of Dec'b'r, 1897, being the 1st payment on entry in the year beginning Dec'b'- 7th, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st	Dec. 7, '97	2,065	6	\$123 90	New Orleans.
2nd.....					
3rd.....					
4th.....					
5th.....					

P. O. LABATUS,
*Naval Officer.*CALHOUN FLUKER,
D'y Collector.

67

EXHIBIT "D" (from Ship's Documents).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80364.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector & naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 21st day of February, eighteen hundred and ninety-eight, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other pur-

poses," approved June 26, 1884, was paid on the Span. S/S Guido—Ormaechea, master—of Bilbao, by A. K. Miller & Co., as per American admeasurement, 2,065 tons, amounting to one hundred and twenty-three dollars and ninety cents.

The above payment was made on entry from Liverpool, England, on the 21st day of February, 1898, being the 2nd payment on entry in the year beginning December 7th, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.	Dec. 7, '97	2,065	6	\$123.90	New Orleans.
2nd.	Feb. 21, '98	2,065	6	123.90	New Orleans.
3rd.					
4th.					
5th.					

P. O. LABATUS,
Naval Officer.

HENRY M. FURMAN,
Sp'l D'y Collector.

68 United States District Court, Southern District of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document, pages numbered from one to sixty-seven, inclusive, constitute a true copy of the record and proceedings in the case of *The United States vs. The S. S. Guido & her cargo*, prize, lately adjudicated in said court and remaining on file and of record in my office.

Seal District Court of the
United States, South-
ern District of Florida.

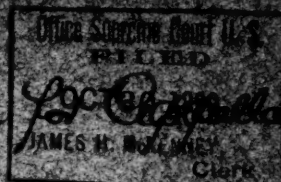
In testimony whereof I have hereunto
set my hand and affixed the seal of said
court this twenty-third day of August,
A. D. 1898.

E. O. LOCKE, *Clerk*,
By LOUIS STARKE,
Deputy Clerk.

Endorsed on cover: Case No. 16,966. S. Florida D. C. U. S. Term No., 381. The Steamer "Guido," Julian de Ormaechea, claimant, appellant, vs. The United States. Filed August 26th, 1898.

N^o. 122.

Brief of Mynderse



Filed Oct. 30, 1899.

Supreme Court of the United States.

No. 122.

THE STEAMER GUIDO, JULIAN DE ORMAECHEA,

Claimant-Appellant.

against

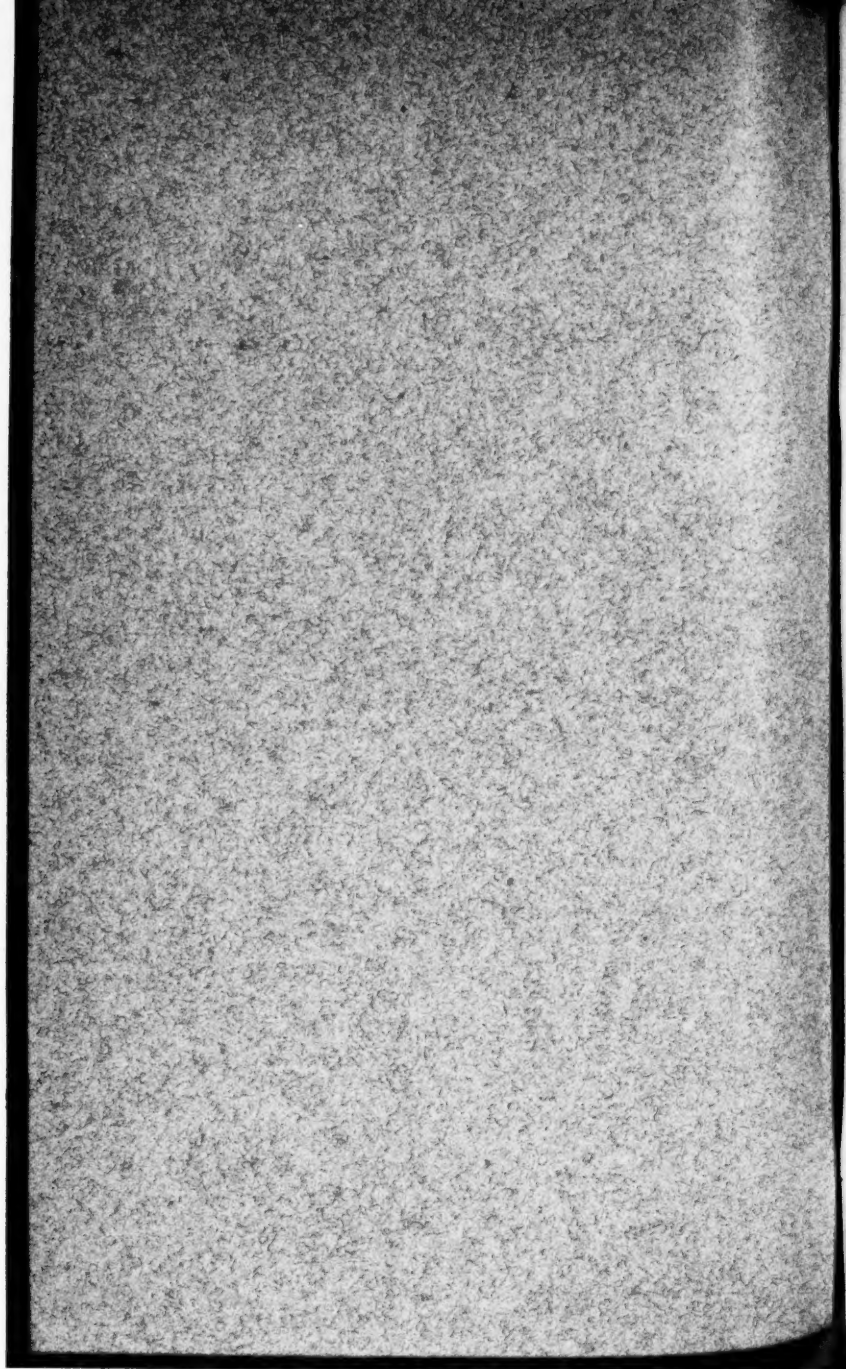
THE UNITED STATES OF AMERICA,

Libellants-Respondents.

Brief for Claimant and Appellant

WILHELMUS MYNDERSE,

Advocate.



Supreme Court of the United States.

THE STEAMER GUIDO, JULIAN DE ORMAE-
CHEA,

Claimant and Appellant,

against

THE UNITED STATES OF AMERICA,
Libellants and Respondents.

No. 122.
October Term,
1899.

BRIEF FOR THE APPELLANT.

Statement of Facts.

This appeal runs from a decree of the District Court of the United States for the Southern District of Florida, bearing date May 27, 1898, condemning the steamer *Guido* as lawful prize of war in an action instituted in that Court by the United States of America.

The libel was filed April 28th, 1898 (*Libel*, p. 1), and on the same day process issued against the steamer, then lying in the port of Key West, Florida, and she was seized by the Marshal (*Monition and Return*, pp. 2, 3).

The time for the claimant to appear having been extended until May 23d, Julian de Ormaechea, the master of the steamer, on that day filed his claim "as bailee for the interests of the owners of the steamer according to the test affidavit" annexed to the claim (*Claim*, pp. 3, 4).

The depositions of the master and of Jesus Echevarria, the first officer, were taken *in preparatorio* upon the stand-

ing interrogatories by the Prize Commissioners upon the 14th day of May (*Depositions in Preparatorio*, pp. 21-27).

The case came on for trial before Judge Locke, and on the 27th day of May he made an order denying the application of the claimant for leave to take further or additional proofs (*Order*, p. 8), and entered a decree condemning the steamer as legal prize of war (*Decree*, p. 10).

On the same day the claimant filed assignments of error (*Ass. of Error*, pp. 10, 11), and gave notice of appeal in open court from the decree (*Notice of App.*, pp. 11, 12, *Abstract of Minutes*, p. 10).

The appeal was formally allowed by the District Judge (p. 12), and the appeal bond given by the claimant was approved by him. A citation thereupon issued which was served the same day upon the District Attorney (*Record*, p. 13).

The *Guido* was a steamer hailing from the port of Bilbao, Spain, where she was owned by the Compania de Navegacion la Flecha, a Spanish corporation.

She was documented to "navigate as a merchant vessel "according to established laws" (á navegar y comerciar bajo las reglas establecidas), with authority to engage in "legitimate commerce" (legítimo comercio) "so long as "she might sail under the Spanish flag without change of "her capacity, shape or equipment" (interin este buque se halle bajo el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo).

Royal Patent, Ex. C., pp. 36, 37.

She had been built in Belfast, Ireland, in 1883, for the Compania de Navegacion la Flecha. About that time she received a Spanish register and ever since then she has carried the Spanish flag and has been operated under the management of the house of G. H. Fletcher & Company, of Liverpool, England (*Test. Afft.*, p. 4; *Deps. in Prep. Ans. 9th Int.*, p. 22).

The Compania de Navegacion la Flecha is a corporation organized under the laws of the Kingdom of Spain. Its capital is divided into one thousand shares, of which two hundred shares have stood in the name of Thomas Hughes Jackson, and two hundred in the name William R. P. Jack-

son of the firm of G. H. Fletcher & Company, of Liverpool, both British citizens; while six hundred shares have stood in the names of Jose Serra y Font, Raimundo Realde Assua, and Ramon Real y Assua, residents and citizens of Spain (*Test. Afft.*, p. 5).

The certificates of all the shares of the corporation, however, have in fact been owned and possessed by Thomas Hughes Jackson, who for many years has thereby been constituted the sole beneficial owner of the steamer (*Test. Afft.*, p. 5).

The claimant became master of the *Guido* only four months before her capture, though he had been in the employ of her owners for nineteen years, and had known the steamer from the time she was built (*Test. Afft.*, p. 5; *Deps. in Prep. Ans. to 4th, 6th and 9th Ints.*, pp. 21, 22).

During the entire life of the steamer she was engaged in the transportation of cargo for hire as a merchant vessel under the management of G. H. Fletcher & Company of Liverpool. Her voyages have begun in Europe, where she has taken cargo for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for a port of discharge in Europe, the round voyage occupying about three months (*Test. Afft.*, p. 5).

The *Guido* had a cargo capacity of about 5,000 tons. On April 1st and 2nd, she took on board at Liverpool about 186 tons of cargo, and on April 5th, 6th and 7th at Santandar, Spain, about 300 tons, and at Corunna, Spain, about 200 tons, and on April 10th, at La Puebla, Spain, about 30 tons. The entire cargo was between 700 and 800 tons, and occupied only a small portion of the cargo capacity of the vessel. It consisted of rice, flour, potatoes, beans, and like general cargo (*Test. Afft.*, pp. 5, 6; *Deps. in Prep. Ans. to 8th Int.*, pp. 22, 25).

The cargo was shipped for delivery at Havana, Matanzas, and Cienfuegos, Cuba; it being the intent and purpose of the master to proceed from Cuba to a port of the United States for a return cargo, across the Atlantic (*Test. Afft.*, p. 6).

The entire freight upon the cargo shipped was less than \$4,000, a sum altogether insufficient to cover the expenses

of loading, transporting and delivering the cargo; and offering no inducement for the voyage, the entire inducement being the full cargo which the vessel would take in regular course from the United States to Europe, the freight upon which at the then current rates would be nearly, if not fully, \$30,000 (*Test. Afft.*, p. 6).

Upon clearing from Liverpool the master took out a bill of health defining that the vessel was "bound for a port in the United States of America, via Spain and Cuba" (*Ex. B*, p. 39).

The *Guido* sailed from Liverpool April 2nd, and from La Puebla, the last Spanish port, April 10th, and directed her course to Havana, as her first port of call (*Test. Afft.*, p. 6; *Deps. in Prep. Ans. to 7th Int.*, p. 21).

In regular course she had, at four o'clock A. M. of April 27th, reached a point fourteen miles northwest of Cardenas, Cuba, and about seventy miles from Havana, when she was captured by the United States ships of war *Machias*, *Terror* and *Foote*, and was sent in by them to Key West, where she and her cargo were libeled as prize of war, April 28th (*Libel*, p. 1; *Test. Afft.*, p. 6; *Deps. in Prep. Ans. to 3d Int.*, pp. 21-25).

The *Guido* carried no arms or ammunition or contraband goods, and made no resistance to the captors (*Test. Afft.*, p. 6; *Deps. in Prep. Ans. to 3d, 8th and 31st Ints.*, pp. 21, 22, 24, 25, 27). She carried no dispatches, and there were "no officers, soldiers or marines" on board (*Deps. in Prep. Ans. to 16th and 26th Ints.*, p. 23).

On April 20th the President of the United States approved the following joint resolution of the two houses of Congress:

"Resolved, By the Senate and the House of Representatives of the United States of America, in Congress assembled:

"FIRST.—That the people of the island of Cuba are, and of right ought to be, free and independent.

"SECOND.—That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and with-

“draw its land and naval forces from Cuba and Cuban waters.

“THIRD.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

“FOURTH.—That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.”

30 *U. S. Statutes at Large*, p. 738.

On the same day Luis Polo de Bernabe, the Spanish Minister to the United States, wrote as follows to the Secretary of State:

“LEGATION OF SPAIN,

“WASHINGTON, D. C., April 20, 1898.

“MR. SECRETARY:

“The resolution adopted by the Congress of the United States of America and approved to-day by the President is of such a nature that my permanence in Washington becomes impossible, and obliges me to request from you the delivery of my passports. The protection of the Spanish interests will be intrusted to the French Ambassador and to the Austro Hungarian Minister. On this occasion, very painful to me, I have the honor to renew to you the assurances of my highest consideration.

“LUIS POLO DE BERNABE.

“The Hon. JOHN SHERMAN, Secretary of State of the United States of America.”

Upon the following day the Minister of Foreign Affairs of Spain addressed the following letter to the United States Minister at Madrid:

“MADRID, April 21, 1898.

“Hon. STEWART L. WOODFORD,

“Minister of the United States of America.

“Dear Sir: In compliance with a painful duty I have the honor to inform Your Excellency that the

" President having approved a resolution of both
 " Chambers of the United States, which in denying
 " the legitimate sovereignty of Spain and threatening
 " an immediate armed intervention in Cuba, is equiv-
 " alent to an evident declaration of war, the Gov-
 " ernment of His Majesty has ordered its Minister
 " in Washington to withdraw without loss of time
 " from the North American territory, with all the
 " personnel of the Legation. By this act the diplo-
 " matic relations which previously existed between
 " the two countries are broken off, all official com-
 " munications between their respective representa-
 " tives ceasing, and I hasten to communicate this to
 " Your Excellency in order that on your part you
 " may make such dispositions as seem suitable. I
 " beg Your Excellency to acknowledge the receipt of
 " this note at such time as you deem proper,
 " and I avail myself of this opportunity to reiterate
 " to you the assurances of my distinguished con-
 " sideration.

" P. GULLON."

At 6.30 A. M. on April 22d, Admiral Sampson, in com-
 mand of the North Atlantic fleet, sailed from Key West to
 undertake the blockade of that part of the northern coast
 of Cuba extending from Cardenas to Bahia Honda (*Re-
 port of Sec. of Navy, Nov. 15, 1898, accompanying Pres.'s
 Message to Congress of December 5, 1898, Vol. II., p. 904*).

On that day the President issued the following pro-
 clamations:

" Whereas, by a joint resolution passed by the
 " Congress and approved April 20, 1898, and com-
 " municated to the Government of Spain, it was
 " demanded that said Government at once relin-
 " quish its authority and Government in the Island
 " of Cuba and withdraw its land and naval forces
 " from Cuba and Cuban waters; and the President
 " of the United States was directed and empow-
 " ered to use the entire land and naval forces of
 " the United States, and to call into the actual
 " service of the United States the militia of the
 " several States to such extent as might be neces-
 " sary to carry said resolution into effect; and
 " Whereas, in carrying into effect said resolution,
 " the President of the United States deems it
 " necessary to set on foot and maintain a block-

“ade of the North coast of Cuba, including all
 “ports on said coast between Cardenas and Bahia
 “Honda, and the port of Cienfuegos on the South
 “coast of Cuba;

“Now, therefore, I, William McKinley, President
 “of the United States, in order to enforce the said
 “resolution, do hereby declare and proclaim that
 “the United States of America have instituted, and
 “will maintain a blockade of the North coast of
 “Cuba, including ports on said coast between Car-
 “denas and Bahia Honda and the port of Cienfuegos
 “on the South coast of Cuba, aforesaid, in pursu-
 “ance of the laws of the United States and the law
 “of nations applicable to such cases. An efficient
 “force will be posted so as to prevent the entrance
 “and exit of vessels from the ports aforesaid, Any
 “neutral vessel approaching any of said ports, or
 “attempting to leave the same, without notice or
 “knowledge of the establishment of such blockade,
 “will be duly warned by the Commander of the
 “blockading forces, who will endorse on her register
 “the fact, and the date, of such warning, where such
 “endorsement was made; and if the same vessel
 “shall again attempt to enter any blockaded port,
 “she will be captured and sent to the nearest con-
 “venient port for such proceedings against her and
 “her cargo as prize, as may be deemed advisable.

“Neutral vessels lying in any of said ports at the
 “time of the establishment of such blockade will
 “be allowed thirty days to issue therefrom.

“In witness whereof, I have hereunto set my
 “hand and caused the seal of the United States to
 “be affixed.

“Done at the City of Washington, this 22d day
 “of April, A. D. 1898, and of the Independence of
 “the United States the one hundred and twenty-
 “second.

“[SEAL.]

WILLIAM MCKINLEY.

“By the President:

“JOHN SHERMAN,

“Secretary of State.”

Messages and Papers of the President, Vol.
X., pp. 202, 203; 30 U. S. Statutes at
Large, 1769.

On the 25th of April, the following Act of Congress was
 presented to and signed by the President:

“ *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* First, That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, Anno Domini, eighteen hundred and ninety-eight including said day, between the United States of America and the Kingdom of Spain.

“ SECOND.—That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect.

“ Approved April 25, 1898.”

30 *U. S. Statutes at Large*, 364.

On the 26th of April the President of the United States issued a further proclamation, as follows:

“ WHEREAS, By an act of Congress, approved April 25, 1898, it is declared that war exists, and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

“ WHEREAS, It being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris,

“ NOW, THEREFORE, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim:

“ FIRST.—The neutral flag covers enemy's goods with the exception of contraband of war.

“ SECOND.—Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

“ THIRD.—Blockades, in order to be binding, must be effective.

“ FOURTH.—Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading

" their cargoes and departing from such ports or
 " places; and such Spanish merchant vessels, if
 " met at sea, by any United States ship, shall be per-
 " mitted to continue their voyage, if, on examination
 " of their papers, it shall appear that their cargoes
 " were taken on board before the expiration of the
 " above term; Provided, that nothing herein con-
 " tained shall apply to Spanish vessels having on
 " board any officer in the military or naval service
 " of the enemy, or any coal (except such as may be
 " necessary for the voyage), or any other article
 " prohibited or contraband of war, or any dispatch
 " of or to the Spanish Government.

" FIFTH. - Any Spanish merchant vessel which,
 " prior to April 21, 1898, shall have sailed from any
 " foreign port bound for any port or place in the
 " United States, shall be permitted to enter such port
 " or place, and to discharge her cargo, and afterwards
 " forthwith to depart without molestation; and any
 " such vessel, if met at sea by any United States
 " ship, shall be permitted to continue her voyage
 " to any port not blockaded.

" SIXTH. -The right of search is to be exercised
 " with strict regard for the rights of neutrals, and
 " the voyages of mail steamers are not to be in-
 " terfered with except on the clearest grounds of
 " suspicion of a violation of law in respect of contra-
 " band or blockade.

" In witness whereof, I have hereunto set my
 " hand and caused the seal of the United States to
 " be affixed. Done at the City of Washington on
 " the 26th day of April, 1898, and of the Independ-
 " ence of the United States the one hundred and
 " twenty-second.

" WILLIAM MCKINLEY."

Messages and Papers of the Presidents, Vol.
X., pp. 204, 205; 30 Statutes at Large, 1770.

The claimant of the *Guido* has assigned the following as the leading errors in the judgment appealed from:

(A.) That the said District Court did not hold that the steamer was privileged and exempt from condemnation under the fifth article or paragraph of the said proclamation.

(B.) That the said District Court did not hold that the said steamer *Guido* was privileged and exempt from capture and condemnation as being the property of neutrals.

(C.) That the said District Court did not authorize, allow and order further and additional proofs respecting the matters set forth in the claimant's test affidavit, or in respect of any of the matters therein set forth.

Assignments of Error, p. 11.

POINTS.

First.

IN CONSIDERING THE CONTENTIONS OF THE CLAIMANT, ESPECIALLY THOSE ARISING UNDER THE PROCLAMATION OF APRIL 26TH, IT IS NECESSARY TO CARRY IN MIND THE HUMANE AND LIBERAL POLICY WHICH HAS GOVERNED THE UNITED STATES IN THE PAST, AND ALSO TO CARRY IN MIND THE PERSONAL VIEWS OF PRESIDENT MCKINLEY.

For more than a century the United States of America have urged upon other nations the adoption of the rule that all private property at sea, whether belonging to neutrals or to enemies, should be free from capture, unless contraband of war or violating blockade.

In a letter addressed to Benjamin Vaughan under date of March 14th, 1785, Benjamin Franklin said:

“It is time, it is high time, for the sake of
 “humanity that a stop was put to this enormity.
 “The United States of America, though better situated than any European nation to make profit
 “by privateering, are, as far as in them lies, endeavoring to abolish the practice, by offering in
 “all their treaties with other powers, an article engaging solemnly that in case of future wars no
 “privateer shall be commissioned on either side,
 “and that *unarmed merchant ships on both sides*
 “shall pursue their voyages unmolested. This will
 “be a happy improvement of the law of nations.

“The humane and the just cannot but wish general success to the proposition.”

Works of Franklin, Vol. 2, pp. 478-485.

Under the administration of President Monroe, when John Quincy Adams was Secretary of State, the proposition was again put forward in correspondence between the Department of State and the foreign ministers of the United States. Under date of July 28th, 1823, Mr. Adams wrote to Mr. Richard Rush, United States Minister to Great Britain:

“It has been remarked that by the usages of modern war the private property of an enemy is protected from seizure and confiscation as such; and private war itself has been almost universally exploded *upon the land*. By an exception, the reason of which it is not easy to perceive, the private property of an enemy *upon the sea* has not so fully received the benefit of the same principle. Private war, banished by the tacit and general consent of nations from their territories, has taken its last refuge upon the ocean, and there continued to disgrace and afflict them by a system of licensed robbery, bearing all the most atrocious characters of piracy. To a government intent, from motives of general benevolence and humanity, upon the final and total suppression of the slave trade, it cannot be unreasonable to claim her aid and co-operation to the abolition of private war upon the sea.
“From the time when the United States took their place among the nations of the earth this has been one of their favorite objects.”

5 American State Papers, 529.

In the same year, under date of August 13, 1823, Mr. Adams wrote to Mr. Middleton, United States Minister to Russia:

“The principle upon which the Government of the United States now offers this proposal to the civilized world is, that the same precepts of justice, of charity, and of peace, under the influence of which Christian nations have, by common consent, exempted private property on shore from the destruction or depredation of war, require the same exemption in favor of private

“property upon the sea. If there be any objection to this conclusion, I know not in what it consists; and if any should occur to the Russian Government, we only wish that it may be made the subject of amicable discussion.”

Adams to Middleton: *Wharton's International Law Digest*, § 342, p. 261.

On January 5, 1835, Mr. Gallatin wrote to Mr. Everett:

“The British, in the case of war, seize every vessel in their ports belonging to the enemy. With this single exception, the relic of an age of barbarism and piracy and which makes part of the King's Droits of Admiralty, I am not aware that any civilized nation does at this time, *even in case of war, seize the property of private individuals which in time of peace has been trusted to the hospitality and good faith of the country.*”

Gallatin's Writings, 2, p. 476.

A provision has been incorporated from time to time in the treaties negotiated between the United States and certain foreign nations, relieving from capture and seizure, in the event of war, the private property of their respective citizens, excepting contraband of war. The first instance of such a treaty is that between the United States and Prussia, referred to by President Adams in his special message to Congress of March 15, 1826, when he states that the treaty is

“memorable in the diplomatic annals of the world,
“and precious as a monument of the principles in
“relation to commerce and maritime warfare, with
“which our country entered upon her career as a
“member of the great family of nations.”

Other instances of similar treaty engagements are the treaty with Bolivia in 1858 (*Treaties and Conventions between the United States and other Powers*, 90, 93), and the treaty with Italy of 1871 (*Id.*, 581, 584).

Following the treaty of peace signed at Paris between France and Russia in 1856, the signatories framed a declaration known as the Declaration of Paris, as follows:

“1. Privateering is and remains abolished.

"2. The neutral flag covers enemy's goods, with the exception of contraband of war.

"3. Neutral goods, except contraband of war, are not liable to capture under the enemy's flag.

"4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient in reality to prevent access to the coasts of the enemy."

The United States, almost alone among the nations of the world, withheld its signature from the Declaration of Paris, not, however, through any disapproval of the principles of the Declaration; but because the Declaration, while abolishing privateers, did not accord exemption from capture to all private property at sea.

President Pierce, two years before the date of the Declaration of Paris, in his second annual message to Congress, Dec. 4, 1854, had said:

"Should the leading powers of Europe concur in proposing as a rule of international law to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground."

Richardson's President's Message, Vol. 5, p. 275.

In 1856 he made the Declaration of Paris a subject of comment in his fourth annual message to Congress saying:

"I have expressed a readiness on the part of this Government to accede to all of the principles contained in the declaration of the conference of Paris, provided that the one relating to the abandonment of privateering be so amended as to effect the object for which, as is presumed, it was intended—the immunity of private property on the ocean from hostile capture. To effect this object it is proposed to add to the declaration that 'privateering is and remains abolished' the following amendment: 'and the private property of subjects and citizens of a belligerent on the high seas shall be exempt from seizure by the public armed vessels of the other belligerent,

“ ‘except it be contraband.’ This amendment has
 “ been presented not only to the powers which have
 “ asked our assent to the declaration to abolish
 “ privateering, but to all other maritime nations.”

The subject received fresh consideration from our Government on the occasion of the revolt of the Southern States in 1861.

Mr. Seward, the Secretary of State, in addressing the United States Ministers in European countries, April 24, 1861, wrote:

“ For your own information it will be sufficient
 “ to say that the President adheres to the opinion
 “ expressed by my predecessor, Mr. Marcy, that it
 “ would be eminently desirable for the good of all
 “ nations that the property and effects of private
 “ individuals not contraband should be exempt from
 “ seizure and confiscation by national vessels in
 “ maritime war.”

Wharton's International Law Digest, § 342,
 p. 275.

At that time the United States expressed to the European powers its inclination to accept in full the terms of the Declaration of Paris, but Great Britain and France, and perhaps other nations, apprehended that our adhesion at that time might occasion awkward predicaments in view of the naval operations likely to be undertaken by the Southern States.

Douglas Owen's Declaration of War, p. 33.

Reservations were therefore suggested, which led to the United States Government abandoning for the time their request to be made parties to the Declaration.

Mr. Seward, then Secretary of State, writing to Mr. Adams, Minister to Great Britain, expressed his regret at the attitude of Great Britain, and further said:

“ It is my desire that we may withdraw from the
 “ subject carrying away no feelings of passion, preju-
 “ dice or jealousy, so that in some happier time it
 “ may be resumed, and the important objects of the
 “ proposed convention may be fully secured. I be-
 “ lieve that that propitious time is even now not

“ far distant, and I will hope that when it comes
 “ Great Britain will not only willingly and uncondi-
 “ tionally accept the adhesion of the United States
 “ to all benignant articles of the declaration of the
 “ Congress of Paris, but will even go further, and,
 “ relinquishing her present objections, as the *United*
 “ *States have so constantly invited, that the private*
 “ *property, not contraband, of citizens and subjects*
 “ *of nations in collision shall be exempted from con-*
 “ *fiscation equally in warfare waged on land and*
 “ *in warfare waged upon the seas, which are the*
 “ *common highways of all nations.*”

Seward to Adams: *Wharton's International Law Digest*, § 342, pp. 285-286.

While there has not been a permanent acceptance by all nations of the principle that private property at sea should be exempt from capture, much has been done towards ameliorating the hardships of the original rule which imposes the penalty of capture upon all enemy property at sea.

In the treaty of Aix la Chapelle, between France and Spain on the one side, and England on the other, it was agreed that all prizes taken before the formal declaration of war should be restored.

Vattel (Chitty & Ingraham's edition), Vol. III., p. 316.

In 1859, France and Sardinia, in signing a treaty of peace at Zurich, agreed that:

“ to diminish the evils of war, and by an exceptional
 “ departure from the law generally observed, the
 “ captured Austrian vessels which have not yet been
 “ condemned as prizes, shall be restored.”

In the Austro-Prussian war of 1866 the principle of inviolability was adhered to by both parties. Germany proclaimed the same principle in 1870.

Wheaton's Elements of International Law.

In the earliest days of the Franco-German war of 1870, Baron Gerolt, United States Minister from North Germany to the United States, communicated to the Secretary of

State this despatch from Count Bismarck, Chancellor of North Germany:

“BARON GEROLT, Washington.

“For your guidance, private property on high seas will be exempt from seizure by his Majesty’s ships, *without regard to reciprocity*.

“BISMARCK.”

Secretary Fish, in acknowledging this letter, made it the subject of congratulation and rejoicing that the “great and enlightened German Government” proposed to adhere to the principle which had been “advocated by this Government whenever opportunity has offered,” adding

“Count Bismarck’s despatch communicated in your letter of the 19th instant shows that North Germany is willing to recognize this principle (even without reciprocity) in the war which has now unhappily broken out between that country and France. This gives reason to hope that the Government and people of the United States may soon be gratified by seeing it universally recognized as another restraining and harmonizing influence imposed by modern civilization upon the art of war.”

Foreign Relations 1876, p. 272.

Moreover, days of grace to shipping are now almost universally accorded at the opening of hostilities.

“On the outbreak of hostilities the right of capture at once becomes active, but having regard to the example in moderation set by the belligerent powers in recent wars, it is not unreasonable to suppose the right to capture any enemy vessels within the dominions on the outbreak of hostilities, will henceforth be postponed. Thus, in the war with Russia in 1854, six weeks was allowed for Russian merchant vessels within British territory to load and proceed; whilst such vessels which had sailed for British ports prior to the outbreak were permitted to enter, discharge and proceed unmolested to any port not blockaded. And on the occurrence of the Franco-German war in 1870, thirty days were allowed for German

“merchant vessels in French ports, to load or unload and depart, whilst those vessels which had sailed prior to the war with cargoes on French account were also to be free from capture. To French vessels in German ports a period of six weeks was allowed in which the vessels might load or unload and depart.”

Douglas Owen's Declaration of War, p. 53.

“Formerly, on the outbreak of war, no time was lost in seizing enemy shipping. That it had entered the national ports in time of peace and in good faith counted for nothing. Modern usage tacitly condemns such a breach of the national good faith, and substitutes for it a certain period of grace or ‘law,’ during which the enemy’s merchant vessels may complete the work of discharge or shipment, and proceed in safety to their destination. Thus, in 1854 (Crimean war) Russian merchant vessels in our dominions were allowed six weeks in which to depart. Subsequently, a further thirty days was allowed to Russian vessels in our Indian or Colonial waters. In 1870 (Franco-German war) thirty days were allowed to German vessels in French ports, and to French vessels in German ports six weeks. And in 1897 (Greco-Turkish war) a period of fifteen days was allowed for the clearance of Greek vessels from Ottoman ports, and of Ottoman vessels from Greek ports. From which it may be inferred, though perhaps not taken for granted, that in future, on the outbreak of war, each belligerent will allow ample time for the safe departure of the enemy’s shipping at that time within the national dominions. It was further ordered in 1854, that Russian vessels, on a voyage to any port in the British dominions, should be permitted to enter, discharge and proceed in safety to any port not blockaded.”

Douglas Owen's Maritime Warfare & Merchant Shipping, p. 5.

Spain, by her proclamation of April 23d, allowed thirty days grace to merchant ships of the United States, and gave immunity to neutral ships and their cargoes and to neutral merchandise on enemy’s ships.

"In 1866 it was agreed between Austria on the
 "one hand, and her adversaries Prussia and Italy
 "on the other, that enemy merchandise and enemy
 "merchant ships should both be exempt from cap-
 "ture on the high seas. And in the war between
 "France and Prussia in 1870, the latter power is-
 "sued a declaration that all French merchant ves-
 "sels should be exempt from capture. This decree
 "was, however, subsequently annulled in conse-
 "quence of France having refused to waive her
 "right of capture of Prussian merchant vessels."

Douglas Owen's Declaration of War, 35.

With the full record before him of our own nation's views, and with knowledge of the action taken by other nations in recent wars, President McKinley, in the preamble of his proclamation of April 26th, announced his desire

"that the war should be conducted upon principles
 "in harmony with the present views of nations
 "and sanctioned by recent practice."

Messages and Papers of the Presidents, Vol. X., p.204; 30 U. S. Statutes at Large, 1770.

That the President was in full personal accord with the principles for which our government has stood from its beginning, is shown by his second annual message to Congress, dated December 5, 1898, after the close of the war with Spain.

"The experiences of the last year bring forcibly
 "home to us a sense of the burdens and waste of
 "war. We desire, in common with most civilized
 "nations, to reduce to the lowest possible point the
 "damage sustained in time of war by peaceable
 "trade and commerce. It is true we may suffer in
 "such cases less than other communities, but all
 "nations are damaged more or less by the state of
 "uneasiness and apprehension into which an out-
 "break of hostilities throws the entire commercial
 "world. It should be our object, therefore, to
 "minimize, so far as practicable, this inevitable
 "loss and disturbance. This purpose can prob-
 "ably best be accomplished by an international
 "agreement to regard all private property at sea

"as exempt from capture or destruction by the
 "forces of belligerent powers. The United States
 "Government has for many years advocated this
 "humane and beneficent principle, and is now in
 "position to recommend it to other powers with-
 "out the imputation of selfish motives. I there-
 "fore suggest for your consideration that the Ex-
 "ecutive be authorized to correspond with the
 "governments of the principal maritime powers
 "with a view of incorporating into the permanent
 "law of civilized nations the principle of the ex-
 "emption of all private property at sea, not con-
 "triband of war, from capture or destruction by
 "belligerent powers."

Messages and Papers of the Presidents, Vol.
X., pp. 191, 192.

In the same message he referred to a proposition which
 had been made by the Tsar of Russia, as follows:

"The proposal of the Tsar for a general reduction
 "of the vast military establishments that weigh so
 "heavily upon many people in time of peace was
 "communicated to this Government with an
 "earnest invitation to be represented in the con-
 "ference which it is contemplated to assemble with
 "a view to discussing the means of accomplishing
 "so desirable a result. His Majesty was at once
 "informed of the cordial sympathy of this Govern-
 "ment with the principle involved in his exalted
 "proposal and of the readiness of the United States
 "to take part in the conference. The active military
 "force of the United States, as measured by our
 "population, territorial area, and taxable wealth,
 "is, and under any conceivable prospective condi-
 "tions must continue to be, in time of peace so
 "conspicuously less than that of the armed powers
 "to whom the Tsar's appeal is especially addressed
 "that the question can have for us no practical
 "importance save as marking an auspicious step
 "toward the betterment of the condition of the
 "modern peoples, and the cultivation of peace and
 "good-will among them; but in this view it be-
 "hooves us as a nation to lend countenance and aid
 "to the beneficent project."

Messages and Papers of the Presidents, Vol.
X., pp. 188, 189.

In furtherance of the President's proposition that he be authorized to correspond with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of exemption of private property at sea, the Committee on Foreign Affairs of the House of Representatives on January 30, 1899, reported favorably this concurrent resolution, which had been originally introduced by Mr. Dingley:

"Whereas, the President of the United States, in his annual message communicated to Congress, December 5, 1898, recommended, amongst other things, that Congress empower him to enter into correspondence with the governments of the principal maritime powers with a view of incorporating into the permanent law of civilized nations the principle of the exemption of all property at sea, not contraband of war, from capture or destruction by belligerent powers; and
 "Whereas, such recommendation is in accordance with the policy of the Government of the United States in this regard for more than a century, and the present is eminently a fitting and opportune time for effecting the exemption of non-offending commerce; now therefore be it
 "Resolved, That the recommendations of the President in regard to the freedom from capture of non-offending commerce on the sea during war be and hereby are approved and adopted, and that the President of the United States and the Secretary of State thereof be and hereby are authorized to enter into correspondence with the governments of other nations with a view of obtaining, under proper rules and regulations of international law, the exemption of all private property at sea from capture or destruction by belligerent Powers, whether belonging to citizens of neutral or belligerent nations, unless contraband or violating blockades, and to take measures to carry out these resolutions as in their discretion shall be proper."

*House Report No. 1874, Fifty-fifth Congress,
 Third Session*

The same resolution was introduced in the Senate, December 15th, 1898, by Senator Platt of Connecticut.

Cong. Res., Senate No. 51.

No final action was taken by Congress upon the resolution, as it was deemed that the Peace Conference which was to assemble at the Hague upon the invitation of the Tsar, and to which the President in due course appointed delegates, would properly consider the subject.

The delegates from the United States attended the Peace Conference under full instructions from our Government. They formally presented to the Conference June 20th, 1899, a printed motion addressed to His Excellency M. De Staal, as President of the Conference, as follows:

"In accordance with instructions from their Government, the Delegation of the United States desire to present to the Peace Conference, through Your Excellency, as its President, a proposal regarding the immunity from seizure on the high seas in time of war of all private property, except contraband. * * *

"The proposition *which we are instructed to present* may be formulated as follows: * * *

"The private property of all citizens or subjects of the signatory powers, with the exception of contraband of war shall be exempt from capture or seizure on the high seas, or elsewhere, by the armed vessels or by the military forces of any of the said signatory powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said powers.' * * *

"The fact that we have received the instructions herein referred to *from the President of the United States* shows that the scope of the conference was believed by our Government to be wide enough to include this question." * * *

"The Delegation of the United States of America respectfully request that the matter be submitted by Your Excellency to the proper Commission or to the Conference itself, that it may be decided whether our proposal is among those which should now be considered.

"ANDREW D. WHITE, President.

"SETH LOW.

"STANFORD NEWELL.

"A. T. MAHAN.

"WILLIAM CROZIER.

"FREDERICK W. HOLLS."

Upon the discussion of the motion the Conference determined that the subject matter was not within the scope of the call issued by the Tsar, and that it could not, therefore, receive consideration, the European delegates being without instructions from their several Governments. It was, therefore, remitted to a future Conference.

We submit that in construing the proclamation of a President who has put himself in line with the foremost reformers for the protection of private property at sea in times of war, the most liberal interpretation which his words will bear should be given to the language used by him.

Second.

THE GUIDO WAS PRIVILEGED AND EXEMPT FROM CAPTURE
AND CONDEMNATION UNDER THE FIFTH ARTICLE OR PARAGRAPH
OF THE PROCLAMATION OF APRIL 26TH.

The fifth article of the proclamation is:

“FIFTH. – Any Spanish merchant vessel which,
“ prior to April 21, 1898, shall have sailed from any
“ foreign port bound for any port or place in the
“ United States, shall be permitted to enter such
“ port or place and to discharge her cargo, and afterwards
“ forthwith to depart without molestation;
“ and any such vessel, if met at sea by any United
“ States ship, shall be permitted to continue her
“ voyage to any port not blockaded ”

It was closely modelled upon Her Majesty's Order in Council of March 29, 1854, issued at the beginning of the Crimean war, which read:

“ Any Russian merchant vessel which prior to
“ the date of this order shall have sailed from any
“ foreign port bound for any port or place in Her
“ Majesty's dominions, shall be permitted to enter

“such port or place, and to discharge her cargo, and
 “afterwards forthwith to depart without molesta-
 “tion; and any such vessel, if met at sea by any of
 “Her Majesty’s ships, shall be permitted to con-
 “tinue her voyage to any port not blockaded.”

Spink’s Prize Cases, Appendix iii.

War had been declared by Great Britain against Russia on the 29th of March, and the Order in Council was issued on the same day. The full text of the Order appears in the appendix to Spink’s Prize Cases, and a copy is annexed to this brief.

The language of the proclamation is clear, and suffices, whether construed in the letter or in the spirit, to relieve the *Guido* from condemnation.

The spirit of the rule is apparent. During long years of peace foreign commerce had been invited and encouraged by our country. Spanish merchant vessels under such invitation and encouragement had formed commercial associations with our citizens. They had entered upon lines of trade which brought them to our shores and into our ports. Upon our invitation they left their own waters and the protection of their own Government and freely crossed the ocean and placed themselves within the sphere of our power and within the grasp of our authority.

It would be a direct breach of international good faith to capture and condemn a merchant vessel thus situated.

It was intended by the Proclamation to give to all such vessels at least one chance for safety. If they brought cargo into our country they were to be permitted to free themselves from the embarrassment of their cargo, and go unmolested to any unblockaded port, whether a neutral port or an enemy port. If they were taking cargo, they were to be permitted to complete their loading within reasonable limits of time.

The *Guido* is a conspicuous example of the class of vessels for which protection was intended.

For fourteen years she had been documented as a Spanish merchant vessel, authorized to engage in legitimate

commerce (*Ex. A*, pp. 36, 37). During those years she had followed a regular course of trade under the management of G. H. Fletcher & Company, of Liverpool, England (*Test. Affl.* p. 6).

“ Her voyages have begun in Europe, where she
 “ has taken such cargo as was procurable for Cuban
 “ ports, from which ports, upon discharge of such
 “ cargo, she has proceeded to ports of the United
 “ States, where she has taken cargo for port of
 “ final destination in Europe, either under charter
 “ or on the berth, such cargo from the United
 “ States being the principal cargo of the round voy-
 “ age, and the round voyage occupying about three
 “ months, and she making in regular course about
 “ four voyages a year.”

Test. Affl., p. 5.

Upon the voyage of her capture she took cargo, scarcely one-seventh of a full cargo, at Liverpool and certain Spanish ports, for Havana, Matanzas and Cienfuegos, and sailed from the last port nearly two weeks before the outbreak of war.

The claimant asserts in his test affidavit that the steamer was bound for a port in the United States in accordance with the uniform practice of the owners of the steamer, by which, upon the discharge of her Cuban cargo, she had in the past proceeded to the United States to load. The United States port of loading had not been designated to the claimant before he left Europe (*Test. Affl.*, p. 6).

The *bona fides* of the claim does not, however, rest solely upon the claimant's assertion. It is fully supported by the documents which were seized and sealed by the captors at the time of the capture.

Among such documents was the bill of health taken out by the master at Liverpool April 1st, 1898, in clearing from that port. It was issued by the Consul of the United States at Liverpool, and thus describes the vessel:

“ Vessel engaged in Atlantic trade, and plies
 “ between Liverpool, Spain, Cuba and the United
 “ States.”

It then gives the sanitary details of the vessel and her cargo and of the port of departure, and closes with the following certificate:

"I certify that the vessel has complied with the
 "rules and regulations made under the Act of February 15, 1893, and that the vessel leaves this
 "port bound for a port (unknown) in the United
 "States of America via Spain and Cuba (ports unknown).

"Given under my hand and seal this first day of
 "April, 1898.

"W. J. SULIS,

"Vice and Deputy Consul of the
 "United States of America
 "at Liverpool."

The document is endorsed as follows, the italicized portions being in writing, and the other portions in print:

"Bill of Health;
 "Port of *Liverpool*;
 "Name of vessel *Guido*;
 "Name of Master, *Ormaechea*;
 "From *Liverpool, Spain and Cuba*;
 "To a port in the U. States;
 "Date of Issue, *1st April 1898.*"

(*Ex. B., pp. 38, 39.*)

The certificate of the Consul that the vessel was "bound for a port in the United States" accords specifically with the President's proclamation designating as privileged vessels those bound for a "port or place in the United States."

The last port at which the *Guido* had stopped prior to her capture was the foreign port of La Puebla on the 10th of April.

Test. Afft., p. 6; Deps. in Prep. Ans. to 7th Int., pp. 21, 22, Log Book.

We submit that upon the proofs thus found among the ship's documents, and without further proofs, the vessel was within the provisions of the fifth article of the proclamation.

Moreover, the assertion of the master that the *Guido's* trade lay, not upon this voyage alone, but regularly, to the United States, is sustained by the ship's documents.

The bill of health describes her as a "vessel engaged in "Atlantic trade and plies between Liverpool, Spain, Cuba "and the United States" (*Ex. B, p. 38*).

The master, in his test affidavit, asserts that such trade brought her regularly within the United States at intervals of about three months (*Test. Afft., p. 5*).

This statement is supported by the proofs.

Among the ship's papers, sealed by the captors, were certain certificates of the payment of tonnage duty in the United States.

Two of these certificates are printed in the record, Exhibit C and Exhibit D (*pp. 40, 41*). Exhibit C shows that the *Guido* paid \$123.90 at New Orleans, December 7, 1897; and Exhibit D certifies again to that payment and to the payment of the further amount of \$123.90 at New Orleans, February 21, 1898.

If she had been left to run her course and had not been interrupted by the state of war, she would have made another payment upon arrival in the United States in May, 1898.

The Act of Congress, under which tonnage duties are paid, provides for the payment of a stated rate per voyage, not exceeding a stated amount—five times the voyage rate—in any one year. The rates vary according to the ports, and according to the nationality of the vessel, being subject frequently to reciprocity treaty engagements; but it is important for a vessel to preserve among her papers only the receipts for the current year, which accounts for the fact that the *Guido's* receipts do not run further back than Exhibit C.

23 *U. S. Statutes at Large*, p. 57.

Not only was the *Guido* engaged regularly in trade with the United States, but that trade was the inducing cause which led her into North American waters. She was a large steamer of over 3,000 tons gross register (*Test. Afft., p. 6; Ex. A, p. 36*). She had a cargo capacity of about 5,000 tons measurement; or of about 4,400 dead weight.

The cargo which she took on board in England and Spain for Cuba was between 700 and 800 tons, scarcely one-seventh of a full cargo. The entire freight list on the cargo did not exceed \$4,000, which sum the claimant asserts was "altogether insufficient" to cover the expenses of receiving, transporting and delivering the cargo, and

"offered no inducement to bring the vessel across
 "the Atlantic, the sole inducement being the full
 "cargo which the vessel would take in regular
 "course from the United States to Europe, the
 "freight upon which at current rates would be
 "nearly, if not fully, \$30,000" (*Test. Aftt.*, p. 6).

The principal venture of her contemplated business was the cargo to be taken from the United States. Except for that inducement the vessel would not have been found within the sphere of our operations.

Having trusted to our good faith, the steamer is entitled not only to a literal, but also to a reasonable and liberal construction of the President's proclamation.

She left Europe eleven days before the date which is now assigned as the beginning of the war. At the time of capture she had been at sea for seventeen days, and her master was in entire ignorance of any state of war, and without any notice thereof, and therefore of course without notice of any blockade of the coast of Cuba (*Test. Aftt.*, p. 6).

She carried no arms, no military or naval officers, no contraband of war, no dispatches (*Deps in Prep. Ans. to 3d, 8th, 16th, 26th and 31st Ints.*, pp. 21-25, 27). She was entitled, therefore, to all the privileges accorded by the proclamation.

The first intimation which came to her master that the *Guido* was not an inoffensive merchant vessel was in the way of shots fired by the United States ships of war *Machias* and *Terror* (*Test. Aftt.*, p. 61).

The mere circumstance that the *Guido* had ports of call in Cuba did not divest her of the privileges which be-

longed to her as a vessel bound from Antwerp to the United States.

The doctrine of continuous voyages was practically established by the courts of the United States and was applied conspicuously in this Court in the following cases:

The Circassian, 2 Wall., 130,
The Bermuda, 3 Wall., 551,
The Stephen Hart, 3 Wall., 559,
The Springbok, 5 Wall., 1,
The Peterhoff, 5 Wall., 28.

Those cases generally related to vessels engaged in the transportation of cargoes (ultimately destined for the Confederates) to Nassau or other neutral port, in contemplation that the cargoes might be forwarded directly or indirectly in the same or other bottoms to final destination.

Most of the vessels were captured between England and the neutral port, and were condemned under the doctrine of continuous voyages. In one case it was said:

“ It is an undoubted and general principle, recognized in this Court in the case of the *Bermuda* and several other cases, that an ulterior destination to a blockaded port will infect the primary voyage to a neutral port with liability for intended violation of blockade.”

The Peterhoff, 5 Wall., 28, 54.

We appreciate that in arriving at this doctrine of continuous voyages the Courts have been guided by the acute senses with which persistent and ingenious violators of the law are followed.

But the findings and conclusions of the Court are pertinent to the claimant of the *Pedro*.

There was a case in this Court still earlier than those above cited. The *Joseph*, a vessel of the United States, with full knowledge of the War of 1812, carried a cargo from St. Petersburg to London. She then started in bal-

last for New York, and, on that stage of her voyage, was captured and was proceeded against upon charges of trading with the enemy.

She pleaded that she had finished the offensive voyage, and asked for the application of the usual rule upon that plea, but Mr. Justice Washington said:

“ It is not denied that if she be taken during
 “ the same voyage in which the offense was com-
 “ mitted, she is considered as being still *in delicto*,
 “ and subject to confiscation; but it is contended
 “ that her voyage ended at London; and that she
 “ was on her return embarked on a new voyage.
 “ This position is directly contrary to the facts of
 “ the case. The voyage was an entire one from the
 “ United States to England; thence to the north of
 “ Europe, and thence, *directly or indirectly*,
 “ to the United States. Even admitting that the
 “ outward and the homeward voyages could be sepa-
 “ rated so as to render them two distinct voyages
 “ which is not conceded, still *it cannot be denied*
 “ *that the termini of the homeward voyage were*
 “ *St. Petersburg and the United States* * * *
 “ It was, in short, a voyage from St. Petersburg to
 “ the United States by way of London.”

The Joseph, 3 Cranch., 451, 455.

So the *Joseph*, though in ballast bound to her home port, was condemned because the stage from London to New York and the stage from St. Petersburg to London were considered parts of the same voyage.

The rules of this Court respecting continuous voyages are too strongly supported by logic and are framed in language too explicit to become meaningless when invoked by the claimant of the *Guido*.

It is true that the *Guido* carried no cargo destined for the United States; but we submit that the argument of the District Judge that she is in any way disentitled to relief because she was coming to the United States only “ to take property away ” is of no weight (*Opinion*, p. 34). Immunity was not given for any selfish reason but in recognition of our moral obligation to treat fairly those

non-belligerents with whom we had cultivated commercial intercourse, and who consequently found themselves or their property within the circle of warlike operations.

The further argument of the District Judge that the *Guido* was in the meantime carrying on commerce between the enemy's ports would furnish no reason to condemn her, even if accurate in point of fact. It would have been a mere incident of the trade in which she was customarily engaged, and in respect of which it was designed to give her protection.

If the trade promised to be violative of blockade, she might properly be restrained by notification of the existence of war and of the proclamation of blockade, in accordance with the provisions contained in the proclamation of April 22nd, for warning neutral or friendly vessels.

30 *U. S. Statutes at Large*, 1769; *supra*, pp. 6, 7.

As a privileged vessel, the *Guido* was entitled to the same notice as though she had been neutral or distinctly friendly. The argument of the District Judge in respect of possible commerce between enemy ports is especially inapt, when we consider that the carrier's contemplated ports of call were Cuban ports, and that Congress had enacted on April 20th—a week prior to the capture—that “the people of “the island of Cuba are, and by right ought to be, free “and independent.”

30 *U. S. Statutes at Large*, 739.

Moreover, commerce between the *Guido's* contemplated ports of call was *impossible*. All three of the ports, Havana, Matanzas and Cienfuegos, were under blockade by the proclamation of April 22nd. It is not suggested that she was proposing to violate the blockade.

30 *U. S. Statutes at Large*, 1769.

She knew nothing of the blockade, nor indeed did she know even of the state of war. She was still seventy miles from the first of her proposed ports of call.

If the *Guido* had been in one of our own ports loading a cargo of provisions for Spain, she would have been per-

mitted, under the terms of the proclamation, to complete such cargo and to proceed with it to her port of destination, enemy port though it might be, provided her cargo was not contraband and that the port was not a blockaded port.

Incidentally the District Judge suggests that the *Guido* is outside the proclamation because she might be informed of a condition of war before approaching our shores. Even if we admit that the spirit of the proclamation had no broader range than to permit Spanish merchant vessels, bound for our ports, instantly to seek safety in their own waters after knowledge of war, the *Guido* did not receive even that measure of grace. Her master was absolutely ignorant of any state of war.

An English case is peculiarly applicable, because it arose under the Order of Council of March 29th, 1854, which is in substantially the same phraseology as the Proclamation of April 26th. The *Argo*, a Russian vessel, was captured May 6th, in entering Queenstown Harbor. She pleaded the provisions of the Order in Council. The Order provided in terms exemption to any Russian merchant vessel which, prior to March 29th, should have sailed from any foreign port bound for any port in Her Majesty's dominions. The *Argo* had sailed in ballast from Havana in February, six weeks before the date of the Order, to take a cargo from Matanzas, Cuba. She sailed from Matanzas April 2nd, four days after the date of the Order, bound for Cork for orders. Dr. Lushington, after announcing that "all relaxation of belligerent rights emanating from the "Government" should receive "liberal construction," said:

"This vessel did sail from the Havannah prior
 "to the date of the Order; she sailed from Matan
 "zas subsequently to the date of the Order.
 "When she left the Havannah she was in ballast
 "bound for Cork, according to the charter party.
 "It has been contended that this Order in Coun-
 "cil contemplated that the Russian vessel should
 "have been laden at the date of the Order; but I
 "find no words in the Order that would justify my
 "putting so strict a construction upon it. *Neither*

“do I think that there are any words which impose the necessity of not touching at or taking a cargo at some other port than that where the voyage commenced. For instance I apprehend that a vessel might have taken in a part of her cargo from one foreign port, having left that port prior to the 29th of March, and taken in another part of the cargo at another foreign port subsequently.

“The real meaning of the Order in Council, according to my view of it, is, that the vessel shall have sailed prior to the 29th of March, on a voyage to end in Great Britain, and I am clearly of opinion that this was one continuous voyage, the commencement of which was at the Havannah, and that the sailing from Havannah prior to March the 29th is a substantial compliance with the terms of the Order.”

The Argo, Spinks's Prize Ct. Cases, 52, 53.

It cannot be doubted that Dr. Lushington, upon the facts proved in this case, would discharge the *Guido*, and we submit that the construction given by the English courts to the Order in Council, which formed the basis of the President's proclamation, is entitled to the highest consideration by this Court.

If the *Guido* had taken any cargo at Antwerp for the United States there could be no argument against her right to go free.

If she had completed her Cuban ports, and had been captured while on her way from Cienfuegos to the United States there could be no argument against her right to exemption.

If her ports of call had been in the island of Jamaica instead of in the island of Cuba, the learned District Judge would not have thought of condemning her.

Are the rights of the owners of the steamer to be governed by such trifling accidental facts? Are they not entitled to a construction, in accord with the spirit and the letter of the proclamation, under which the steamer would go free?

Third.

THE GUIDO WAS EXEMPT FROM CONDEMNATION UPON THE GROUND THAT SHE WAS OWNED BY NEUTRALS.

The steamer was registered in the name of a Spanish corporation, the Compania de Navegacion la Flecha; but the corporation was under the active management of the British firm of G. H. Fletcher & Company, of Liverpool, England (*Test. Affl.*, p. 5).

G. H. Fletcher & Company gave possession of the vessel to her master (*Deps. in Prep. Ans. to 4th Int.*, p. 21); and they generally managed the affairs of the steamer (*Test. Affl.*, pp. 4, 5).

It is apparent that the name of the corporation, Compania de Navegacion la Flecha, was adopted to identify the steamer with the house of the managers, G. H. Fletcher & Company.

The capital stock of the company was divided into one thousand shares. Two hundred shares stood in the name of William R. P. Jackson, of the firm of G. H. Fletcher & Company, and two hundred shares in the name of Thomas H. Jackson, both of whom were domiciled in England and were British subjects (*Test. Affl.*, pp. 5, 6). Two hundred shares stood in the name of Jose Serra y Font; two hundred shares in the name of Raimundo Real de Assua, and two hundred shares in the name of Raimon Real y Assua; all of whom were domiciled in Spain and were citizens of that kingdom.

All the certificates of these shares, however, and it appears by the test affidavit that the possession of the certificate establishes ownership thereof, have, for many years last past, been possessed by Mr. Jackson, who has been, and at the time of capture was, the true and lawful owner of all of the shares for value, and thereby the sole beneficial owner of the steamer (*Test. Affl.*, p. 5).

The steamer had, for fourteen years, been kept under the Spanish flag, as her trade lay regularly in round voyages

from Europe to Cuba, the United States, and back to Europe, to avail of the discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the Colonies of Spain, such discrimination being granted in consideration of dues paid by said steamer to the Government of Spain (*Test. Affl.*, p. 5).

It further appears that the beneficial owner of the steamer contemplated that she should be kept in such trade only so long as it might be lawfully and peacefully carried on, and to withdraw her from the Spanish register and from under the Spanish flag and restore her to the British registry and British flag, whenever such trade should be disturbed; but that no opportunity therefor was afforded prior to her capture, such capture having taken place prior to any outbreak of hostilities, and before any state of war was known (*Test. Affl.*, p. 5).

The documents held by the steamer from Spain merely authorized her "to navigate as a merchant vessel according "to established laws" (á navegar y comerciar bajo las reglas establecidas); and pursue her "regular navigation "in legitimate commerce" (regular navegacion y legitimo comercio) "so long as she should carry the Spanish flag, "and should not change her capacity, her build, or her "equipment" (interin este buque se halle bajo el pabellon y no varie de capacidad y figura en el casco y aparejo) (*Exh. A*, pp. 36, 37).

If the facts asserted in the test affidavit are true—and proofs should be allowed in respect of them if they indicate a legal defence—it is submitted that the *Guido* should be treated as a neutral.

The phrase is common that the character of a ship is to be determined by the flag she carries, but like every phrase, we find upon examination that there are well defined exceptions.

Professor Lawrence, in one of the most recent books upon international law, says:

"A ship with an enemy captain and crew, employed in the trade of the enemy, would be "treated as enemy property, even though she be

“longed to a neutral owner, and the same fate
 “would probably befall a neutral ship habitually
 “sailing under the enemy’s flag, or taking a pass
 “or license from the enemy.”

*Principles of International Law by Lawrence,
 Sec. 182, p. 325.*

This extract intimates that the *ownership* of a vessel determines whether or not it is neutral, and that the rights of the owner are not effectually determined by the flag which he is carrying.

Moreover, in the courts of our country, especially in the more recent cases, it is found that a controlling feature leading to condemnation is the time and opportunity which the owner has had to make a change of flag and register.

The *Hallie Jackson* was condemned because, not only the vessel in fact “belonged to an enemy,” but because the owner’s “purpose to navigate her as such in defiance “of the laws and Government of the country to which “he owed allegiance” was indicated by his setting sail from Savannah “after the well known state of war between the seceding States and the United States was on “foot, and the proclamations of April 15, 19, 27, and “May 3 had been issued and were personally known to “the ship’s company and her owner at Savannah” and because he had carried a Confederate flag on the voyage out from Savannah, and in Matanzas whilst lying in that port, and again on the return voyage to the United States.

The Hallie Jackson, Blatch. Prize Cas., 42.

This array of facts would scarcely have been recited against the owner if the simple position of the registered ownership in the enemy, or the carrying of the enemy flag, would suffice to condemn the vessel.

The *William Bagaley* was captured July 18, 1863. She had been documented by the Confederate States June 16, 1863, by a register issued at Mobile, and was captured in striving to break the blockade of Savannah. She was owned by Cox, Brainard & Co., of Mobile. One Joshua

Bragdon, a loyal citizen of Indiana, claimed a one-sixth share in the vessel through his partnership in that firm. In sustaining the condemnation of the steamer the Court said:

“The omission of the appellant to dispose of his interest in the steamer, and his failure to withdraw his effects from the rebellious State, are attempted to be explained and justified because the same were, as alleged in the petition, confiscated during the rebellion under the authority of the rebel government. *More than a year, however, elapsed* after the proclamation of the blockade was issued before any such pretended confiscation.”

The William Bagaley, 5 Wall., 377, 408.

Reference was made by the Court to the fact that ships moreover, stand on different footing from other property, and after citing the case of the *Industrie* (cited by Dr. Lushington, 33 Eng. Law & Eq., 572), the Court continued:

“Principle of the decision is that whoever embarks his property in shares of a ship is in general bound by the character of the ship, whatever it may be, and that principle is as applicable to a citizen, after due notice and reasonable opportunity to dispose of his shares, as to a neutral” (p. 410).

Another case is that of a blockade runner which was captured between Mobile and Havana in December, 1863. The owner of the vessel, who had built her in Alabama, claimed her, asserting that he was loyal and was bringing her out of the enemy's country. The Court disposed of the case adversely to the claimant by saying:

“If the allegations of the claimant are true, he postponed his effort to escape too long to derive any benefit from it. The law does not permit such delay.”

The Gray Jacket, 5 Wall., 342, 368.

In the French and German war of 1870 *La Palme* was captured January 15, 1871, by the steamer *Bouragne*, and taken into Bordeaux for condemnation.

She was registered in the name of a German citizen, resident in Bremen, and carried the German flag. She was claimed by the Société des Missions de Bâle, Switzerland. The claimant asserted that the vessel had been purchased from Hanoverian owners in 1866, at which time she carried the Hanoverian flag; that the owner was a Swiss corporation; that Switzerland had no maritime flag; that the vessel had therefore continued for a time under the Hanoverian flag, and later had been put under the German flag, the title to the vessel being assigned to the resident agent or representative of the society in Bremen, through whom and in whose name she was documented.

War broke out between Germany and France in July, 1870. The vessel, when captured in January, 1871, was still flying the German flag. She was condemned in the court of original jurisdiction; upon the first appeal the decree of condemnation was revoked; but she was subjected to a fine in the way of *cautionnement* in the amount of 15,000 francs. Upon further appeal to the Conseil d'Etat the proceedings against her were entirely dismissed.

The decision was based upon two grounds:

- (1). That Switzerland had no maritime flag;
- (2). That Switzerland had rendered service to the French army during the war.

The Court held that either ground sufficed to set aside the capture.

La Palme, Recueil General des Lois & Arrêts, Sirey, Devilleneuve & Carrette, 1873, Part 2, p. 237.

The editors append this note to the decision:

“NOTE.—Ces résolutions ne sont pas sans précédents. A plusieurs reprises, le gouvernement Français a consenti, soit par des considérations d'équité, soit par des motifs politiques, à se départir du droit qui lui appartient de déclarer de

“bonne prise la capture de tout bâtiment portant
“le pavillon ennemi.”

“These conclusions are not without precedent.
“In many captures the French Government has
“consented through considerations of equity, or
“through political reasons, to refrain from the
“right which belonged to her of declaring good
“prize every ship carrying the enemy’s flag.”

There was no opportunity open to the owner of the *Guido* to abandon the Spanish flag and register. The steamer was captured April 27th, on the high seas. She had been in no port since she sailed from La Puebla, April 10th, eleven days before the beginning of the war.

Fourth.

THERE WAS NO SUFFICIENT PROBABLE CAUSE FOR THE ORIGINAL CAPTURE, AND THE CAPTORS SHOULD THEREFORE BE CONDEMNED TO PAY THE EXPENSES OF THE CAPTURE AND THE COSTS OF THE LITIGATION.

The President’s proclamation, under which the *Guido* was privileged from capture and condemnation, was issued April 26th, one day before her capture, and two days before the libel was filed against her.

Her captors and her prosecutors were bound to know of her privileges, and they acted at their peril.

Pending the appeal the steamer has been sold as perishable property (*Record*, pp. 14, 15), and therefore physical restoration of the steamer to the claimant is impossible. A decree for the payment of the fund resulting from the sale, together with a decree against the captors for the expenses of the capture and the costs of the suit, is the only relief that can be given.

Fifth.

THE DECREE OF THE DISTRICT COURT SHOULD BE REVERSED, AND A MANDATE SHOULD ISSUE DIRECTING THE COURT IN THE WAY OF RESTORATION TO PAY OVER TO THE CLAIMANT THE PROCEEDS OF SALES OF THE GUIDO AND TO CHARGE UPON THE CAPTORS THE EXPENSES OF THE CAPTURE AND THE COSTS OF THE SUIT, AND TO TAKE ALL NECESSARY PROCEEDINGS TO THAT END.

If the decree of restoration is based solely upon the neutral ownership of the *Guido*, it may be that the Court will require further proofs.

If the decree is based upon the privilege extended by the President's proclamation of April 26th, we submit that the proofs given *in preparatorio*, and those found in the ship's papers are sufficient.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Proctors for Claimant-Appellant.

WILHELMUS MYNDERSE,
Advocate.

APPENDIX.

AT THE COURT OF BUCKINGHAM PALACE

the 29th day of March, 1854,

Present,

The Queen's most Excellent Majesty in Council.

Her Majesty, being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof is pleased by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on before the expiration of the above term: Provided, that nothing herein contained shall extend to or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian Government.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships shall be permitted to continue her voyage to any port not blockaded.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

No. 122.

UNITED STATES SUPREME COURT
FILED

OCT 30 1899

JAMES H. MCCAMMON, CLERK

Brief of a Common Pleader
Supreme Court of the United States.

October Term, 1899.

Filed Oct. 30, 1899.

THE STEAMER "GUIDO," JULIAN
DE ORMAECHEA, CLAIMANT,

APPELLANT,

No. 122.

v.

THE UNITED STATES.

Appeal from the District Court of the United States for
the Southern District of Florida.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

JOS. K. McCAMMON,
JAMES H. HAYDEN,

Of Counsel for Captors.

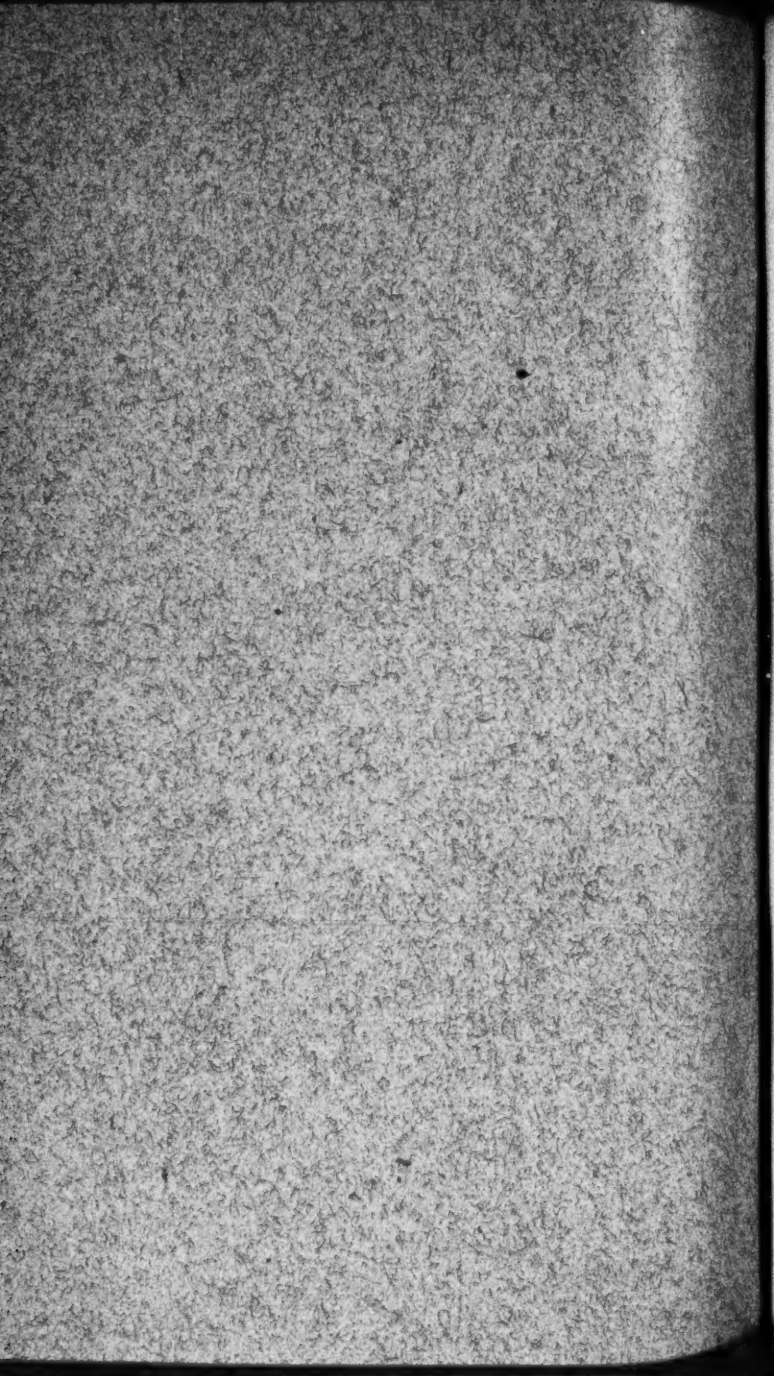
HENRY M. HOYT,

*Assistant Attorney General,
for the United States.*

WASHINGTON, D. C. :

GIBSON BROS., PRINTERS AND BOOKBINDERS.

1899.



Supreme Court of the United States.

OCTOBER TERM, 1899.

THE STEAMER "GUIDO," JULIAN DE
ORMAECHEA, CLAIMANT,

APPELLANT,

v.

THE UNITED STATES.

No. 122.

Brief for the United States and the Captors.

STATEMENT OF FACTS.

This is an appeal by the claimant of the Spanish steamer *Guido* from a decree of the District Court of the United States for the Southern District of Florida, by which that vessel was condemned as a prize of war.

The *Guido* was built at Belfast, Ireland, in 1883, and had always borne the name under which she went at the time of her capture. It does not appear for whom she was built, but it was stated by her master and first officer that she had always belonged to La Compania la Flecha, a Spanish corporation of Bilboa, Spain, and had sailed under Spanish registry and the Spanish flag. When captured, she had among her papers a royal patent from

the Crown of Spain, which was issued to Don José Serra y Font, a Spanish subject, on November 15, 1887. She was officered and manned by Spanish subjects, all of whom except her first officer were registered in the Spanish naval reserve.

Her last voyage began at Liverpool, whence she proceeded to Santander, Coruna, and La Puebla, Spain. At Liverpool and at each of these Spanish ports she took cargo composed of various food supplies, all of which was shipped for Havana and other Cuban ports.

She had no charter, nor had she any definite plan for the continuation of her voyage after discharging her cargo in Cuba. Formerly it had been her custom to carry a cargo from Spanish and other European ports to Cuba, and then proceed to some port of the United States for a return cargo of lumber.

She cleared from La Puebla for Havana on the 10th of April and proceeded on her way until the 27th of that month, when she was captured by the U. S. S. *Machias* and *Terror* about seventy miles to the eastward of Havana, and sent to Key West in charge of a prize crew. Here she was libeled. In due course, proofs *in preparatorio* were taken, which included the ship's papers and the deposition of her master and first officer. Subsequently the master appeared in the cause on behalf of the owner, and made claim to the vessel. He then presented a motion asking leave to take further proof, respecting matters set forth in his test affidavit filed therewith. In the affidavit, he alleged that although a majority of the stock of La Compania La Flecha stood in the names of Spanish subjects, and only a minority in the names of British subjects, the latter had possession of all of the certificates of stock, and under the terms of the Company's charter were equitably entitled to the whole of the stock.

He stated that the vessel had been transferred to Spanish registry to obtain the benefit of discriminations made by Spanish law, in favor of Spanish vessels engaged in the West Indian trade: Also that her British stockholders proposed to retain the *Guido* in that trade and under the Spanish flag only so long as they might be able to do so without incurring the risks of war, and that these stockholders were contemplating the transfer of the vessel to British registry, because of the war pending between the United States and Spain, but had not found an opportunity to do so up to the time of her capture: Also that the vessel had customarily made trips from European ports, with cargoes for Cuba, which having been discharged, she would proceed to some port of the United States for a return cargo, either under charter or on berth, and that her voyages depended in a great measure for their profit upon the freight received on the return cargo: Also that he did not know of the war in progress between the United States and Spain, and had no notice of any blockade of Cuban ports: Also that, after giving his deposition *in preparatorio*, he had learned that the vessel was insured against all perils and adventures, including the risks of war, by British underwriters, upon whom the loss would eventually fall, if the vessel were condemned.

This motion was overruled.

On this appeal the claimant presents seven assignments of error. He contends that the vessel was exempt from capture and condemnation as property owned by neutrals, and also because of the privileges extended by the fifth and other articles of the proclamation of the President issued on April 26, 1898. He further contends that he was entitled to take further proofs in respect to the matters set forth in his test affidavit.

We maintain :

I. The *Guido* at the time of her capture was enemy property on the high seas and liable to capture and condemnation as such (Errors 1st, 2d, and 3d).

II. The *Guido* was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President issued on April 26, 1898 (Errors 4th, 5th, and 6th).

III. The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the prize court in allowing the claimant to take further proofs (Error 7th).

I.

The Guido at the time of her capture was enemy property, on the high seas, and liable to capture and condemnation as such (Errors 1st, 2d, and 3d).

The appellant maintains that inasmuch as British subjects were the legal owners of some, and the equitable owners of the rest of the stock of La Compania La Flecha, and inasmuch as the *Guido* was insured against risks of war by British underwriters, she was neutral property, and exempt from capture and condemnation.

In the case of *The Friendschaft*, 4 Wheat. 105, it appeared that a shipment was made by a firm established in London. Of the three partners, two were British subjects. The third, one Moreira, was domiciled in the kingdom of Portugal. The United States and Great Britain being at war, *The Friendschaft* was captured by an American vessel, and she and her cargo were condemned as prize. From this decree Moreira appealed, claiming that the property, so far as his share was concerned, was

neutral, and not subject to condemnation. Story, J., delivering the opinion of the court, said :

“ It has been long since decided in the Courts of Admiralty that the property of a house of trade established in the enemy's country is condemnable as prize, whatever may be the domicile of the partners. The trade of such a house is deemed essentially a hostile trade and the property engaged in it is, therefore, treated as enemy's property, notwithstanding the neutral domicile of any of the company. The rule, then, being inflexibly settled, we do not now feel at liberty to depart from it, whatever doubt might have been entertained, if the case were entirely new.”

In the case of *The Cheshire*, 3 Wallace, 231, it was said :

“ No principle is more firmly settled than that the property of a commercial house established in the enemy's country is subject to seizure and condemnation as prize, without regard to the domicile of the partners. The trade of a house of this kind is essentially a hostile trade and the property employed in its prosecution is therefore treated as enemy's property, though some of the partners may have a neutral domicile. Such trade tends directly to aid the resources and revenues of the enemy, and, as observed by Mr. Justice Story, ‘ There is no reason why he who thus enjoys the protection and benefits of the enemy's country should not, in reference to such a trade, share his dangers and losses.’ It would be too much to hold him entitled, by a mere neutral residence, to carry on a substantially hostile commerce and at the same time possess all the advantages of a neutral character.”

The Frances, 8 Cranch, 335.

Story's Principles and Practice of Prize Courts, pp. 60-61.

This rule having been established for cases which in-

volve the undivided interest of a neutral, in property owned by him in common with citizens of the enemy's country, no different rule can be applied in a case like the one at bar. The neutral stockholders did not hold any title to the vessel, legal or equitable, in severalty or in common.

It is entirely immaterial whether any or all of the stock of La Compania La Flecha was owned by neutrals.

It is alleged that the former owners wished to place the vessel in the West Indian trade, and wanted the pecuniary advantage offered to Spanish vessels. To secure this end they elected to convey the *Guido* to a corporation incorporated under the laws of Spain, and domiciled in Spain; she sailed under the Spanish flag, a Spanish license granted to a Spanish subject, and was officered and manned by Spaniards. Then she became a Spanish vessel, for she could not hold allegiance to two nations at the same time.

In a treatise upon International Law by W. E. Hall, it is said (p. 524):

"Property not impressed with a belligerent character by its origin and belonging to a neutral, becomes identified with a belligerent by being subject wholly to his control or being incorporated into his commerce. Thus, a vessel owned by a neutral, but manned by a belligerent crew, commanded by a belligerent captain and employed in the trade of a belligerent state, is deemed to be a vessel of the country from which she navigates, and the acceptance of a pass or license from a belligerent state, or of sailing under its flag, entails the same consequence."

By several decisions of this court it has been held that the mere act of sailing under a license granted by a belligerent state is sufficient to condemn a vessel without re-

gard to the object of her voyage or the port of her destination.

The Ariadne, 2 Wheat. 143, 147-148.

The Hiram, 1 Wheat. 440, 447.

The Aurora, 8 Cranch. 203.

The Julia, *Id.* 181.

The alleged intention of the British stockholders to restore the *Guido* to British registry is not a material fact, if, indeed, its suggestion, after capture and after the taking of proofs *in preparatorio*, entitle it to be spoken of as a fact. The restoration had not been effected when the *Guido* was captured, and it could not be made afterward.

The Grey Jacket, 5 Wall. 342, 368.

It is not to be expected that the shipping of the world shall shift about at will from one flag to another, simply to suit the commercial advantage or wishes of the owners. A ship's nationality and her flag are of more significance than the color of her paint. The latter she may change for economic, or even esthetic reasons, but the former establishes her character as enemy or as neutral property.

II.

The Guido was not exempt from liability to capture and condemnation by virtue of any provision of the proclamation of the President issued on April 26, 1898. (Errors 4th, 5th, and 6th.)

The fifth article of the proclamation provided :

“Fifth. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port, bound for any port or place in the United States, shall be permitted to enter such port or place, and to

discharge her cargo, and afterward forthwith to depart without molestation ; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded."

This was intended to cover the cases of Spanish vessels which had sailed from foreign ports, with cargoes, bound for ports of the United States prior to the actual commencement of the war, and had proceeded on their voyages presumably in ignorance of the existence of war.

There seem to be two reasons for the granting of this exemption.

First. A Spanish vessel might have left a distant port without any knowledge that the strained relations of the two countries had developed into war. Such a vessel, bound direct for one of our ports and having no intermediate port of call, would not be likely to gain knowledge of the outside world until made a prize by one of our naval vessels. This would be a harsh experience and one which the more humane methods of modern warfare tend to prevent.

Second. It is desirable, as a matter of policy, that at the outbreak of war, a nation be supplied with foreign goods. Hence that vessels of another nation with which war is likely to ensue, should not be deterred from coming here upon the first, perhaps unfounded, rumors of approaching hostilities. Again : It is desirable that the cargoes of Spanish vessels in many instances containing goods ordered or even bought by citizens of the United States should be allowed to enter our ports.

The *Guido's* case does not come within the letter or the spirit of the fifth article of the proclamation. In construing this document no exemption can be interpolated which is neither prescribed in express terms, nor follows as a necessary consequence from an express provision.

The *Phenix*, Spink's Prize Cases, 1.

She did not clear from La Puebla, Spain, on April 10th for any port or place of the United States, but for Havana and other Cuban ports. She had no cargo to deliver at any port of the United States, nor had she even a charter-party to indicate that she intended to proceed hither, after discharging her cargo in Cuba. She was captured on April 27th, six days after the commencement of the war and five days after the blockade of Havana was declared by the President. Had she succeeded in running the blockade and reaching Havana, she could not have cleared for a port of the United States without being subject to capture, because she would have had no cargo and because the proclamation named April 21st as the last day of immunity for such clearances. When taken, she was enemy property at sea and an enemy vessel trading between ports of the enemy. That such property is condemnable is the foundation of the law of prize.

The claimant contends that the indefinite intention of the *Guido*, when she left Spain, to discharge her cargo in Cuban ports and thereafter proceed to some port of the United States with the hope of getting a return cargo for a European port, is sufficient to prove that, when captured, she was engaged in making a voyage which was to be continuous from a foreign port to one of the United States. He argues that this brought her within the immunity granted by the fifth paragraph of the proclamation. The authorities cited in the brief on appeal (pp. 34 to 36) do not support this proposition. If the doctrine could be applied, it would result in the conclusion that the *Guido* was bound on a voyage from one European port to another. On such a voyage she certainly would not have had immunity from capture. But the *Guido* had in contemplation no definite voyage. After reaching the port of Havana and there discharging her cargo,

which was the only business she had on hand, she would have awaited further employment. A vague expectation that such further employment would involve her proceeding to the United States is not sufficient to give her voyage the complexion of one which was to continue beyond Havana.

III.

The claimant's test affidavit and the proofs in the cause do not set up a fact or create a doubt which would have justified the prize court in allowing the claimant to take further proofs. (Error 8th.)

The appellant contends that additional proof should have been ordered respecting matters related in the test affidavit. All material facts were clearly proven by the ship's papers, the deposition of the master of the *Guido* and that of her first officer taken in *preparatorio*. The burden of proving neutral ownership rested upon the claimant. It was proven by these depositions and by the ship's papers that she was enemy property, sailing under the enemy's flag and license, and trading between ports of the enemy. As we have seen, the matters of fact set up in the test affidavit relate principally to this question and are wholly immaterial. If they had been duly and conclusively proven, they would not have tended to prove that the *Guido* was the property of neutrals. The test affidavit does not suggest that the *Guido* was bound upon any voyage, or that she was in any port which would have entitled her to exemption from capture, or that she was so situated as to be entitled to privileges extended by the President's proclamation. No further proof could have disturbed the decree. The District Court did right, in overruling the claimant's motion.

The rule with regard to the ordering of further proofs is this :

Benedict's Admiralty, Sec. 612. "These [ship's] papers and examinations *in preparatorio* constitute the only evidence on which the cause is first heard. If, on this evidence there be doubt, or justice require it, the court may, in its discretion, order further proof."

Story's Principles and Practice in Prize Courts, pp. 9, 18, 24.

In the case of the *Amiable Isabella*, 6 Wheat. 1, 77, it was said (Story, J.):

"It is to be recollected that, by the settled rule of prize courts, the *onus probandi* of a neutral interest rests on the claimant. This rule is tempered by another, whose liberality will not be denied—that the evidence to acquit or condemn shall, in the first instance, come from the ship's papers and persons on board, and, where these are not satisfactory, if the claimant has not violated good faith, he shall be admitted to maintain his claim by further proof, but if, in the event, after full time and opportunity to adduce proofs, the claim is still left in uncertainty and the neutrality of the property is not established beyond a reasonable doubt, it is the invariable rule of prize courts to reject the claim and decree condemnation of the property."

The Jenny, 5 Wall. 183, 188.

Pizarro, 2 Wheat. 240. "Nor should the captured crew have been permitted to be re-examined in court. They were bound to declare the whole truth upon their first examination, and if they then fraudulently suppressed any material facts, they ought not to be indulged with an opportunity to disclose what they please, or to give color to their former statements

after counsel has been taken and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule."

Grey Jacket, 5 Wall. 342, 368. "This is not a proper cause for an order for further proof. The order is always made with extreme caution, and only where the ends of justice clearly require it.

The Euphrates, 8 Cranch 385.

The Hazard, 9 Cranch 205.

We submit that the decree of condemnation should be affirmed.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
of Counsel for Captors.

HENRY M. HOYT,
*Assistant Attorney-General,
for the United States.*

THE GUIDO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

No. 122. Argued November 3, 1899.—Decided December 11, 1899.

This was an appeal from a decree condemning the Guido as prize of war. On the facts, concisely stated in the opinion of the court, it is held following *The Pedro*, ante 355, that the case was properly disposed of below.

THE statement of the case will be found in the opinion of the court.

Wilhelmus Mynderse for Julian de Ormaechea, claimant and appellant.

Mr. James H. Hayden for the captors. *Mr. Joseph K. McCammon* was with him on the brief.

Mr. Assistant Attorney General Hoyt filed a brief for the United States.

Mr. George A. King and *Mr. William B. King* filed a brief for certain captors.

Opinion of the Court.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This is an appeal from a decree of the District Court of the United States for the Southern District of Florida condemning the steamer Guido as prize of war.

The Guido belonged to La Compania La Flecha, a Spanish corporation of Bilboa, Spain, and sailed under Spanish registry and the Spanish flag, having a royal patent from the Crown of Spain, and being officered and manned by Spanish subjects. Her voyage began at Liverpool, whence she proceeded to Santander, Corunna and La Puebla, Spain. At Liverpool and at each of the Spanish ports she took on cargo consisting principally of food supplies, all shipped to Havana and Cuban ports. It had been her custom to carry cargo from Spanish and other European ports to Cuba, and then proceed to some port of the United States for a return cargo of lumber, and it was her intention on this occasion to do this, but she had no charter or specific engagement, so far as appeared, for the continuation of her voyage after discharging in Cuba. It was certified in her bill of health issued at Liverpool "that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for a port (unknown) in the United States of America, via Spain & Cuba ports (unknown)."

The steamer cleared from La Puebla for Havana April 10, and was captured April 27 about seventy miles to the eastward of Havana, and sent to Key West in charge of a prize crew. She was there libelled and proofs *in preparatorio* were taken. The master appeared on behalf of the owner and asserted claim to the vessel, and moved for leave to take further proofs in respect of matters set forth in his test affidavit therewith filed, which motion was denied. The averments of the affidavit corresponded with those in the case of the *Pedro*.

We are of the opinion that the case was properly disposed of, and the decree of the District Court is

Affirmed.

MR. JUSTICE SHIRAS, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM dissented.